United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

against

MAX SCHAFFER, NORMAN SCHAFFER,
BENJAMIN T. MARCO, HYMAN KARP,

Defendants-Appellants,

ANTHONY STRACUZZA, MARIO STRACUZZA,
DOROTHY STRACUZZA,

Defendants.

ON APPEAL FROM THE JUDGMENTS OF CONVICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX TO BRIEF OF APPELLANTS MAX SCHAFFER AND NORMAN SCHAFFER

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INDEX.

TABLE OF CONTENTS OF APPELLANTS' APPENDIX.

	Page
Appropriate Docket Entries	1a
Indictment C-145-232	5a
Indictment C-145-233	8a
Excerpts From Testimony	10a
Colloquy	10a
Mr. Moran—For Government—Summation	22a
Charge of the Court	50a
Verdict	64a
Colloquy	65a
Sentence	69a

APPELLANTS' APPENDIX.

APPROPRIATE DOCKET ENTRIES.

10-20-54. Filed indictment.

1-14-54. Filed complaint dated 7-28-53, temporary commitments for Anthony Stracuzza, Mario Stracuzza and Dorothy Stracuzza, Notice of appearance by Raymond L. Wilkes, Atty., 233 Bway NYC for defts. Stracuzza. Bail bonds for Anthony Stracuzza $10,000; Mario Stracuzza $15,000; Dorothy Stracuzza $7500; Marie Stracuzza $2500, dated 7-29-53. Mfrs. Cas. Ins. Co.

10-22-54. Filed notice of appearance by Irving W. Coleman, 1820 Main St., Northampton, Pa. Atty for Max Schaffer and Norman Schaffer. Bernard L. Buskin, co-counsel, 24 W. 40th St., NYC.

10-26-54. Filed Notice of Appearance—Harris B. Steinberg, 25 Broad St., NYC, Atty for Deft Hyman Karp.

10-29-54. Anthony Stracuzza, Mario Stracuzza and Dorothy Stracuzza plead not guilty. Released on own recognizance. See C 145-234 for bail. RYAN, J. Hyman Karp pleads not guilty. Bail cont'd. Deft. ordered fingerprinted. Benjamin T. Marco pleads not guilty. Bail continued. Defts. allowed 10 days for motions. RYAN, J.

10-29-54. Filed notice of appearance by Jerome Katz, P.O. Box 234 Bluefield West Va. Paul Rutheiser, 36 W 44th St. NYC co-counsel for deft. Marco.

11- 9-54. Max Schaffer pleads not guilty—bail $5000. Norman Schaffer pleads not guilty—bail $5000.

1-15-58. Filed affidavit and notice of motion for an order dismissing indictment and for a separate trial as to deft. Hyman Karp. (Argued Dec. reserved, 1-20-58). DAWSON, J.

1-20-58. Filed memorandum #24057 by DAWSON, J. Motion by defts. Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp to dismiss indictment and motion by deft. Karp for a severance are denied. So ordered.

1-20-58. Filed government's affidavit in opposition.

3-14-58. Anthony Stracuzza and Mario Stracuzza plead guilty, Atty present. Sentences adjd until after trial of co-defendants. Released on own. recognizance. MURPHY, J.

4-21-58. This indictment consolidated with Cr 145-233 for purposes of trial. Trial as to Max Schaffer, Norman Schaffer, Hyman Karp and Benjamin T. Marco begun before MURPHY, J. and a jury.

4-30-58. Trial cont'd on Apr. 22, 23, 24, 25, 28, 29. Govt rests Defts. move to dismiss indictment, and all counts. Granted as to count 4, and decision reserved as to counts 1, 2 and 3.

5- 6-58. Defts. renew motion for judgment of acquittal and for new trial. Decision reserved. Bail for all defendants continued. Probation report ordered on all defts. Sentencing of all defendants adjourned to 6-3-58. MURPHY, J.

6- 3-58. Filed Judgment #62,237 NORMAN SCHAFFER—Count one Two (2) YEARS, at a place of confinement to be designated by the atty gen'l of the U.S. and fined $10,000. and to stand committed until fine is paid or he is otherwise discharged according to law. Bail continued pending appeal.

6- 3-58. Filed Judgment #62,238 MAX SCHAFFER—Count one Two (2) YEARS, at a place of confinement to be designated by the Atty Gen'l of the U.S. and fined $10,000. and to stand committed until fine is paid or he is otherwise discharged according to law. Bail continued pending appeal.

6- 3-58. MARIO STRACUZZA—FIVE (5) YEARS on each of counts 1-2-3-4 to run concurrently with each other and concurrently with sentences imposed this day on indictments Cr 145-233 and Cr 145-234. Execution of sentence suspended, probation for FIVE YEARS, subject to the standing probation order of this court.

6- 3-58. ANTHONY STRACUZZA—FIVE YEARS on each of counts 1-2-3-4 to run concurrently with each other and concurrently with sentences imposed this day on indictments Cr. 145-233 and Cr 145-234. Execution of sentence suspended, probation for FIVE YEARS, subject to the standing probation order of this court.

6- 3-58. Filed notice of appeal as to deft Norman Schaffer.

6- 3-58. Filed notice of appeal as to deft Max Schaffer.

6-11-58. Filed stipulation that indictment Cr. 145-233 and docket entries relative thereto shall be part of the record on appeal from conviction in this case.

7- 3-58. Filed order that the time of each of the defendants herein to file and docket the record on appeal, be and it hereby is extended to 9-11-58. Edelstein, J.

7-16-58. Filed transcript of record of proceedings dated April 21, 22, 23, 24, 25, 28, 29, 30, May 1, 1958, June 3, 1958, July 11, 1958.

7-31-58. Entered and filed nolle prosequi as to Dorothy Stracuzza. Cashin, J.

INDICTMENT.

No. C-145-232

The Grand Jury charges:

1. From on or about May 15, 1953, up to and including July 27, 1953, in the Southern District of New York, ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA, MAX SCHAFFER and NORMAN SCHAFFER, the defendants, unlawfully, wilfully and knowingly transported and caused to be transported in interstate commerce, to wit, from the Southern District of New York to Lebanon, Pennsylvania, certain goods, wares and merchandise, to wit, ladies' and children's wearing apparel of a value in excess of $5,000, knowing the same to have been stolen and converted.

(Title 18, United States Code, Sections 2314, 2.)

SECOND COUNT.

The Grand Jury further charges:

1. From on or about June 11, 1953, up to and including July 27, 1953, in the Southern District of New York, ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA and BENJAMIN T. MARCO, the defendants, unlawfully, wilfully and knowingly transported and caused to be transported in interstate commerce, to wit, from the Southern District of New York to Bluefield, West Virginia, certain goods, wares and merchandise, to wit, ladies' and children's wearing apparel of a value in excess of $5,000, knowing the same to have been stolen and converted.

(Title 18, United States Code, Sections 2314, 2.)

THIRD COUNT.

The Grand Jury further charges:

1. From on or about May 21, 1953, up to and including July 27, 1953, in the Southern District of New York,

ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA and HYMAN KARP, the defendants, unlawfully, wilfully and knowingly transported and caused to be transported in interstate commerce, to wit, from the Southern District of New York to Fall River, Massachusetts, certain goods, wares and merchandise, to wit, ladies' and children's wearing apparel of a value in excess of $5,000, knowing the same to have been stolen and converted.

(Title 18, United States Code, Sections 2314, 2.)

FOURTH COUNT.

The Grand Jury further charges:

1. From on or about September 1, 1952, up to and including the date of the filing of this indictment, in the Southern District of New York, ANTHONY STRAC ZA, MARIO STRACUZZA, DOROTHY STRACUZZA, MAX SCHAFFER, NORMAN SCHAFFER, BENJAMIN T. MARCO and HYMAN KARP, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with various other persons whose names are to the grand jury unknown, to commit an offense against the United States, to wit, to violate Section 2314 of Title 18, United States Code.

2. It was part of said conspiracy that the said defendants would transport and cause to be transported in interstate commerce goods, wares and merchandise, to wit, ladies' and children's wearing apparel of a value in excess of $5,000, knowing the said goods, wares and merchandise to have been stolen and converted.

(Title 18, United States Code, Section 371.)

OVERT ACTS.

1. In pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York,

on or about the 28th day of July, 1953, the defendants ANTHONY STRACUZZA, DOROTHY STRACUZZA and MAX SCHAFFER were present at the premises 48 West 25th Street, New York City.

2. Further in pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, during the month of July, 1953, the defendants ANTHONY STRACUZZA and NORMAN SCHAFFER were present at the premises 48 West 25th Street, New York City.

3. Further in pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 21st day of July, 1953, the defendants ANTHONY STRACUZZA and BENJAMIN T. MARCO were present at the premises 48 West 25th Street, New York City.

4. Further in pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 21st day of May, 1953, the defendant ANTHONY STRACUZZA had a telephone conversation with the defendant HYMAN KARP.

(Title 18, United States Code, Section 371.)

J. EDWARD LUMBARD,
United States Attorney.

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Foreman.

INDICTMENT.

C-145-233.

The Grand Jury charges:

1. Beginning on or about September 1, 1952, and continuously thereafter up to and including the filing of this indictment in the Southern District of New York, ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA, MAX SCHAFFER, NORMAN SCHAFFER, HYMAN KARP and BENJAMIN T. MARCO, the defendants herein, unlawfully, wilfully and knowingly conspired, combined, confederated and agreed, together and with each other, and with other persons whose names are to the Grand Jurors unknown, to violate Title 18, Section 659, United States Code.

2. It was part of the said conspiracy that the defendants ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA, MAX SCHAFFER, NORMAN SCHAFFER, HYMAN KARP and BENJAMIN T. MARCO, would buy, receive and have in their possession certain goods and chattels, to wit, ladies coats, dresses, blouses, slips, sweaters, shoes and other ladies' and children's wearing apparel, the value of which exceeded $100, which goods and chattels were embezzled, stolen, unlawfully taken, carried away and concealed from motor trucks, platforms and depots and which goods and chattels were moving as, were part of, and constituted interstate shipments of freight and express, knowing the same to have been embezzled and stolen.

3. It was further a part of said conspiracy that the defendants would transport and cause to be transported in interstate commerce said goods and chattels, knowing the same to have been embezzled and stolen.

OVERT ACTS.

1. In pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 25th day of July, 1953, the defendants ANTHONY STRACUZZA, DOROTHY STRACUZZA and MAX SCHAFFER were present at the premises 48 West 25th Street, New York City.

2. Further in pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, during the month of July, 1953, the defendants ANTHONY STRACUZZA and NORMAN SCHAFFER were present at the premises 48 West 25th Street, New York City.

3. Further in pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 21st day of July, 1953, the defendants ANTHONY STRACUZZA and BENJAMIN T. MARCO were present at the premises 48 West 25th Street, New York City.

4. Further in pursuance of the said conspiracy and to effect the objects thereof, in the Southern District of New York, on or about the 21st day of May, 1953, the defendant ANTHONY STRACUZZA had a telephone conversation with the defendant HYMAN KARP.

(Title 18, Section 371, United States Code.)

J. EDWARD LUMBARD,
United States Attorney.

.....
Foreman.

(265) UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

C. 145-232.
C. 145-233.

Before: HON. THOMAS F. MURPHY, *D. J.*, and a Jury.

New York, April 21, 1958;
10:30 o'clock A. M.

Appearances:

PAUL W. WILLIAMS, ESQ., United States Attorney, for the Government; By John T. Moran, Jr., Esq., Assistant United States Attorney;

IRVING W. COLEMAN, ESQ., Attorney for Defendants Max Schaffer and Norman Schaffer;

HARRIS STEINBERG, ESQ., Attorney for Hyman Karp;

JEROME KATZ, ESQ., and PAUL RUTHEISER, ESQ., Attorneys for Defendant Benjamin T. Marco.

EXCERPTS FROM TESTIMONY.

(324) Mr. Steinberg: May I say this: That henceforth, unless indicated to the contrary, any objections will be on behalf of all, in order to save time, if your Honor please.

The Court: Well, that might not be what you all want, unless you specifically agree that the objections by one inures to the benefit of all, because sometimes it might hurt you.

* Figures in parentheses refer to page numbers of typewritten transcript.

Mr. Steinberg: Well, we have agreed among ourselves that will be an easier and quicker way of doing it.

The Court: Yes, but it might hurt one defendant.

Mr. Steinberg: We will try to avoid that. Where such a situation comes up, we'll——

The Court: Can I assume then that when one lawyer objects, he objects for all?

Mr. Steinberg: Yes, sir.

Mr. Coleman: Except——

Mr. Steinberg: Except where otherwise indicated.

(325) Mr. Coleman: Yes. I think there may be instances, as your Honor suggested, that objections may be valid on behalf of the Schaffers that may possibly not be valid on behalf of another. That is true, but we thought that perhaps this could expedite the course of the procedings, your Honor.

The Court: That is all right.

• • •

(1407) The Court: All right.

Now, I will hear the motions of the defendants. But I think it will save me some time, (1408) because I am very much concerned about the conspiracy counts, if I hear the Government first, as to what you think the proof is on both conspiracy counts.

• • •

(1414) The Court: Well, I assume that all defendants move to dismiss all of the various counts in both indictments, at least for their first motion.

Mr. Steinberg: Yes, sir.

The Court: Well, I will grant the motion with regard to both conspiracy counts. So that means that Indictment No. 145-233 is dismissed in its entirety, and count 4 in Indictment 145-232 is also dismissed as against the defendants on trial, in both indictments.

Mr. Moran: May I ask of the Court whether the dismissal is based on a failure to prove a single conspiracy or because of the variance?

The Court: Well, I don't think that you may come anywheres close to the standard that you (1415) have to prove, either as to whether or not there were three separate conspiracies or just a general conspiracy. If you had it worded as three separate conspiracies that is, Stracuzzas and Marco, Stracuzzas and Karp, Stracuzzas and Schaffers, you might have been closer.

* * *

(1416) The Court: But I will grant the motions with regard to both conspiracy counts, and before the argument is heard on the substantive counts, I must in fact tell you that I am very much concerned about the aggregate value, and I only can find one case—the defendants evidently have found (1417) only one case—and your memorandum didn't cite that one case. I haven't read your value cases. Do they relate to the aggregate value? You have four cases on value.

Mr. Moran: I don't believe I gave four cases on value. I gave—unless——

The Court: Four. Here they are, Mr. Moran.

Mr. Moran: Oh, I am sorry.

The Court: Are you familiar with the names of them, to tell whether or not they relate to the problem of lumping values together?

Mr. Moran: Frankly, I am not, your Honor. I am basing my argument to a large extent on the definition of Section 2311.

The Court: Yes.

Mr. Moran: And the Andrews case, I believe.

The Court: That is the one you didn't cite.

Mr. Moran: Oh, I am sorry. I realize that before the Court in that case was the question of grouping a number of shipments.

The Court: My only question now is, have (1418) you been able to find any case dealing specifically with lumping aggregate shipments, other than the Andrews case?

Mr. Moran: No, I have not, your Honor.

The Court: So we are stuck. That is the only one I could find. That is the only one they have cited.

Well, all I can say is that I am just disturbed about it. I will hear the other arguments first.

Mr. Moran: All right.

The Court: So that all that is left, gentlemen, are the three substantive counts. I will hear each counsel on each.

Mr. Steinberg: If your Honor please, you have deprived yourself of hearing a great argument on motion.

Before we get to those points, your Honor, I would like to address myself to the huge mass of evidence which has been admitted here subject to connection on the conspiracies which your Honor has dismissed, and your Honor is familiar with the Cannella case?

The Court: Yes, but the mass can be very (1419) easily segregated.

Mr. Steinberg: Well, it can be easily segregated as a matter of mechanics. Sure, you can tell the jury, "Don't consider this, that and the other things against this man." You can tell them, "Don't consider this." As your Honor knows, there are over 200 exhibits, involving over a thousand sheets of paper here.

The Court: Those are just numbers. 50 of them are checks; 60 more are checks.

Mr. Steinberg: Just bear with me a moment, if your Honor will.

Aside from that, there is evidence here against the defendant Marco that he told someone that he knew the stuff was stolen. That evidence came from Miss D'Andrea. That is very damaging evidence. And when we are all tried together and the jury sees all these men, it is hurtful to anybody, anybody else.

There is evidence that Mr. Schaffer, when he was apprehended, gave a false story to the FBI. That is hurtful to my man, too. There is evidence of a motion picture, where he was walking up and down, selecting something, and a piece of paper was (1420) in his hand, which they will argue was an invoice. That is hurtful, too.

Now, if your Honor please, I think all the evidence which has been admitted of that character—and I am not speaking of the documents alone, but of that character—against these men, have reduced the chances of a fair trial, as far as my defendant Karp is concerned.

Now, if there were no conspiracy indictment in this case at all from the beginning, and the District Attorney has to take that chance—it was his calculated risk; he w ats to proceed on a conspiracy indictment, knowing the risks of showing in indiscriminate evidence, hoping it will be connected later, but not having succeeded in doing that, he took the calculated risk that a great deal would go in which might prejudice one man and another man, then we will be faced with a problem, can that prejudice be eliminated satisfactorily to comply with the proper tests of the law?

Now, since he has failed in the conspiracy test, he is now in the position of having put that evidence in, and I seriously feel, your Honor, that there is very grave doubt that no matter what (1421) instructions your Honor conscientiously gives, it will be very difficult to erase that.

The Court: I don't think so.

Mr. Steinberg: I offer that to your Honor.

The Court: Yes.

Mr. Steinberg: Now, it is not necessary, I take it, for me to move that the evidence admitted subject to connection, that your Honor will of course tell the jury that it is not applicable to the various defendants.

The Court: I will so tell them.

• • •

(1424) Mr. Steinberg: If there is, I won't labor that any more.

But insofar as the element of $5,000, which your Honor has already given attention to, I strongly urge that there is no proof here that there was a single impulse, that there was the kind of activity which was referred to in the Andrews case, so that they can be aggregated into one count to make up five thousand, as has been done here, and the proof is totally defective in that regard.

The Court: Well, counsel are agreed that the aggregate value with regard to each defendant exceeds five, and you are also agreed that no shipment individually equalled five.

Mr. Steinberg: Yes.

The Court: That is correct.

Mr. Steinberg: Yes. But, if your Honor please, the fact that he received $5000 worth of merchandise over a period, and that no shipment was of that value, would mean under the Andrews case that you have to find a certain mental operation there; isn't that so, your Honor?

The Court: Well——

Mr. Steinberg: A certain scheme, or, in (1425) other words, that it was shipped pursuant—in other words, suppose he said this: "I am ordering $20,000. Ship it to me in four installments."

The Court: In the Andrews case it was a conspiracy count to start with; it wasn't a substantive count.

Mr. Steinberg: Yes, but wouldn't you have to—I ask this not captiously—wouldn't you have to have something like that here to aggregate it, if your Honor please?

The Court: Well, that is part of the problem, gentlemen, as to whether you can or cannot aggregate these shipments without proof of some sort of matter.

Mr. Steinberg: I leave that with your Honor. You have given it the attention, and I thank you very much for the attention you have given it.

The Court: Gentlemen, I can tell you that it bristles with questions on which I am not completely satisfied.

What I have in mind, although I don't want to cut you off, is to give the case to the jury on the three substantive counts, and tell them that they have to find that the value —and I suppose they will almost have to find it pursuant to stipulation— (1426) that the aggregate value is over five, and you just have to take an exception to that part of the charge, see what the jury does, and then we consider it again, because I am not too clear what the definition in 2311 really means, where it says you can group these values together if they are included in one indictment. I am inclined to believe that the one indictment means the one charge, so that it is three separate counts relating to the three groups of defendants. I don't think you can take one indictment and charge 70 men and prove a thousand dollars for each one, and then say since the indictment totals $70,000 it comes within the statute. I don't know, and I would like you to work on some sort of a charge with regard to that one item, and I will charge it the way you want me to, Mr. Moran.

Mr. Moran: All right, sir.

The Court: And see what happens.

Mr. Steinberg: We will be glad to submit requests to charge on that point, so your Honor will have them before you.

The Court: Yes.

Mr. Steinberg: As an alternative.

(1427) The Court: But in order to conform with the status of the case now, in order to give it to the jury, I have to assume that the jury can consolidate the amounts over this period of time. In your case, Mr. Steinberg; it is from May——

Mr. Steinberg: May 21st.

The Court:—May 21st to July 27th.

Mr. Steinberg: Yes, sir.

The Court: And I think that is probably the date with all.

Mr. Steinberg: No, I think it is a shorter date with Karp.

Mr. Katz: Marco is June 11th.

The Court: That is the way I will submit it to the jury on that issue, so in effect your case should be devoted, I assume, to your guilty knowledge, and the question whether the goods were stolen.

Mr. Steinberg: And whether we——

The Court: The part about the platforms and trucks, and so forth, is out of the case.

Mr. Steinberg: That is out now, as I understand it.

The Court: I suppose I could charge the (1428) jury, as the statute says I can, that the interstate commerce is proved by the waybills or the bills of lading.

Mr. Steinberg: I think there is a presumption from those, yes.

The Court: And it's all according to the stipulation, shipped from New York to these various out-of-state places.

Mr. Moran: That presumption is only in 659, your Honor.

The Court: Is it?

Mr. Coleman: Yes, your Honor.

May I say something that might help your Honor's thinking on the point you have raised?

One of the defendants, your Honor—and I don't take credit for it, but I did do the research and found that Andrews case—one of the defendants against whom the proof was only of a thousand dollars——

The Court: We found it without your help, too. Don't take all the credit.

Mr. Coleman: Thank you, your Honor.

One of the defendants who had received a thousand dollars, your Honor, was discharged, which (1429) is an indication that the Court——

The Court: What defendant is this?

Mr. Steinberg: In the——

Mr. Coleman: In the Andrews case.

The Court: Oh, yes.

Mr. Coleman: —which is an indication of the Court's thinking. The other amounts, with respect to the other defendants, couldn't be added to that amount. But I will be glad to try to furnish you some more authorities on that point.

The Court: I don't think there is. My clerk checked Shephard's, and there is no case mentioned other than the Andrews case, up to date. I think that is all there is.

Mr. Moran: I think it's an open question.

The Court: I think so, too. I think it is fairer to the Government to give the jury a chance to say yes or no, and if they say no, that is the end of it. If they say yes, you have the right of appeal, and everything else.

Mr. Steinberg: Your Honor, as I understand the Federal Rules, if we make a motion at the end of the whole

case for a judgment of acquittal, you can take that under advisement even after the (1430) jury's verdict?

The Court: What I am going to do now puts you in a most unique position. I am going to assume you are asking for a motion to dismiss counts 1, 2 and 3 of Indictment 145-233, or for a directed verdict as to each of those counts, and I am going to reserve decision, and you know from reading the cases that you put your case in at your peril, because it might develop to your disadvantage.

Mr. Steinberg: I know that, and that is a quandary. That is why I said, at the end of the whole case, if we make a motion, your Honor can take it under advisement. But if you say you are going to reserve decision——

The Court: I do now reserve. I assume you all join in the motion to dismiss the respective counts in which your clients are mentioned.

Mr. Steinberg: We do, your Honor.

* * *

(1435) TRIAL RESUMED.

(Jury in box.)

The Court: Ladies and gentlemen of the jury, again we have not been idle. I can tell you that we will be finished in a few minutes.

Yesterday I dismissed ~~one~~ indictment in its entirety, and that was the indictment that charged these defendants and others with conspiring to violate the particular law involved; and I also dismissed the conspiracy count in the indictment that remains.

The net result of that is that you people will deliberate on the case and concern yourselves with what lawyers call the substantive offenses that are charged against each of these defendants, and you will dismiss from your mind any question of conspiracy at all.

(1436) That means, too, that the various exhibits and testimony that I admitted against one defendant subject to connection against the others is now admitted only against

that particular defendant that the exhibit referred to, or the testimony referred to.

* * *

(1441) And the last stipulation has been entered into in behalf of the defendants Max Schaffer and Norman Schaffer by their counsel, Irving W. Coleman, and by the United States of America, and it reads as follows:

(1442) It is hereby stipulated and agreed by and among the defendants Max Schaffer and Norman Schaffer, and their counsel, Irving W. Coleman, and the United States of America, by Paul W. Williams, United States Attorney for the Southern District of New York, as follows:

"1. That a representative of the consignors (manufacturers) named in the schedules, Government's Exhibits 228, 230 and the second page of Exhibit 229, if called as a witness in behalf of the Government, would testify that the consignor's copy of the invoice, which invoice number is set forth in said exhibits, was made and kept in the regular course of business, and that said representative would also testify that the shipping documents pertaining to the merchandise described in such invoice were retained by said consignors in the regular course of business, and that such representative would identify the articles of clothing as garments manufactured by said consignors or by contractors pursuant to an agreement with said consignors.

"2. That the United States Marshal for the Southern District of New York, or one of his deputies, (1443) if called as a witness for the Government, would testify that he has maintained in his possession the articles of clothing which were recovered from the premises of Schaffer's Women's Apparel Shop, Lebanon, Pennsylvania, and that said merchandise was delivered to him by agents of the Federal Bureau of

Investigation, or by the United States Marshal for Pennsylvania.

"3. That the aggregate value of the merchandise consisting of ladies' wearing apparel, which was transported from the Southern District of New York to Lebanon, Pennsylvania, to the defendants Max Schaffer and Norman Schaffer, during the period from on or about May 15, 1953, up to and including July 27, 1953, was in excess of $5000. Each shipment was a value of less than $5000.

"4. No consignor, manufacturer or manufacturer's representative would be able to recognize a particular garment or garments as being included on this specific invoice."

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(1446) Mr. Coleman: If the Court please, on behalf of the defendants Max and Norman Schaffer, in which motion Harris B. Steinberg, counsel for Hyman Karp, and Jerome Katz, counsel for Benjamin T. Marco, join, we move that pursuant to Rule 29(b) of the Federal Rules of Procedure, Federal Criminal Rules of Procedure, the evidence having closed on both sides, that a motion for judgment of acquittal on the remaining substantive count in the indictment, with respect to each defendant, be granted upon the basis that the Government has failed to establish that merchandise was transported in interstate commerce, in a value equal to or in excess of the jurisdictional amount set forth in Section 2314 of 18 U. S. C. A., and that with knowledge that the same was stolen.

The Court: As I indicated yesterday, I will reserve decision on the motion as to each defendant.

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MR. MORAN—FOR GOVERNMENT—SUMMATION.

(1549) Mr. Moran: May it please the Court, Mr. Steinberg, Mr. Katz, Mr. Coleman, Mr. Foreman and Ladies and Gentlemen of the Jury:

We have now reached the final stage of the trial that pertains to the evidence and summations, and you have sat here, listened for the last two weeks to the evidence that was presented by the Government, and listened to the witnesses as they testified, and saw portions or some of the exhibits that were offered in evidence by the Government.

It is now my privilege to try to tie in in some way some of the loose threads, some of the missing points or portions of the jigsaw puzzle that must exist, I am sure, in your minds, because of the large number of exhibits here, and to indicate to you in some way how they tie in to each of the defendants that are now on trial before you.

(1550) Before I begin my summary, however, I wish to address myself, in the way of making a few comments as to some of the remarks that were made in the course of the summations by the defense counsel this morning.

There were allusions from time to time, or suggestions, if you will, as to why the Government had not called certain persons as witnesses, so that they could be subjected to cross-examination by the defense counsel. Two of the names that were prominently mentioned were Mario Stracuzza and Dorothy Stracuzza.

As you recall, during the course of the trial Dorothy Stracuzza, as was indicated, the Government's case against her pertaining to the two indictments that these defendants were brought to trial on, she was severed; she is still a defendant in this court. The charges are still open against her. They have not been dismissed in any way.

As to the other defendant, Mario Stracuzza, it is the Government's representation to you that he could have offered nothing in the way of additional evidence that was not presented to you through his brother. Because if you

will recall from the (1551) testimony of Agent Miller, both Stracuzzas were interviewed on each and every occasion by him, their story, their testimony, if you will, given to the FBI, was a joint story, and therefore, the testimony of Mario Stracuzza, if he were called to testify, would be in a sense a repetition of all the details that you heard through the witness Anthony Stracuzza.

Furthermore, the Government is not required to call any witness if we believe that there is nothing further that that witness can contribute in the search for the truth.

As Mr. Steinberg told you, and as I will say to you now, he had an opportunity to bring Mario Stracuzza to the witness stand. He also had an opportunity to bring Dorothy Stracuzza to the witness stand. He did not do so for reasons best known to himself.

Now, in making these comments as to the conduct of the prosecution, there was some criticism as to the extent that the Government failed in its obligation to its citizens to bring out all the facts. I say to you as an assistant United States attorney, my job is not to convict people, but is to bring them (1552) here in court, give them a fair chance to meet the charges that the Government has presented against them.

The motto on the building of the Department of Justice in Washington I think fairly indicates the attitude of the Government, as far as its citizens are concerned. It reads:

> "The Government wins when justice is done its citizens in the court."

Now, of course, if you believe that the Government has in some way or other prevented you from getting the full truth of this entire case, that it in some way here concealed the true facts pertaining to any of these defendants, you have only one duty—you have to march right into that jury-room and acquit every one of these defendants.

Mr. Steinberg: May I approach the Bench for a moment, please?

The Court: No, you have to say it in public, counsel.

Mr. Steinberg: I respectfully move for the withdrawal of a juror on that remark, as an improper remark.

The Court: I will deny it. You may have (1553) an exception.

Mr. Steinberg: Exception.

Mr. Moran: Your sole function in this case is to decide the guilt or innocence of the four defendants on trial. You are not here to speculate as to what the Government should have done or could have done, or it actually did do to any of these persons whose names have been mentioned in the course of this trial.

Now, with that in mind, I will now begin a summary of what I believe the Government's evidence consists of in this case.

The Government called as its first witness Anthony Stracuzza, and he told you that in April of 1952 he began his association with Berk and Eisenberg at their place of business on West 33rd Street; that he continued his association with them for a period of two months—for the months of April and May of 1952; that he received for his services of removing tags and labels from garments that had been brought to the office by various truckdrivers in the garment area a sum of approximately $35 a week; that there came a time in June of 1952, when Berk and Eisenberg decided to open a (1554) new place at 110 West 40th Street, and Anthony Stracuzza continued to operate the office at 33rd Street, receiving instead of $35 a week, a percentage of the manufacturer's invoice of the price that the merchandise was sold by the truckdrivers to Berk and Eisenberg, namely, I believe he testified that he received 55 per cent of that invoice price, and had to pay out approximately 45 per cent, and that if the merchandise was sold above 55 per cent, Berk and Eisenberg kept that part.

Now, at that time, in April and May, before Eisenberg and Berk moved to their office on 40th Street, Stracuzza

testified that each of these defendants, now on trial before you, Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp, came to the office; he saw them in the office examine merchandise, and so forth. Also, at that time he saw Freddy Kusnick, and Beatrice Goldman, who I am sure their names meant little or nothing to you at that time, but as I will show you during the course of the evidence that the Government placed in against these defendants, their names had some significance. (1555) Anthony Stracuzza continued to operate the office on 33rd Street until sometime in August of 1952, when Berk decided at that time that they should move to a new location. They therefore took up their place of operation at 1133 Broadway, which is at 26th and Broadway, and they continued from that place of business to perform the same operation, namely, truckdrivers would come in with various parcels and items of merchandise; they would be paid a certain percentage of the manufacturer's invoice price, and Anthony Stracuzza would receive approximately 55 per cent of the invoice price and would pay approximately 45 per cent of the invoice price.

At this time he was associated with his brother, Mario Stracuzza, who joined him in the operation the last few weeks while they were on 33rd Street.

Berk continued in his association with Eisenberg at the 40th Street office, but continued to associate himself also with Mario and Anthony Stracuzza at the place of business on 26th Street, where they operated under the name of A. Finkel. They operated under that name, A. Finkel, from (1556) September of 1952 until sometime in March of 1953.

During that period of time Stracuzza testified that the defendants Max and Norman Schaffer would come to the office of A. Finkel, at 26th and Broadway; they would be shown copies of the original manufacturer's invoices, with the price, with the description of the merchandise, and they would examine the merchandise there in the office.

Also during this period of time Hyman Karp came on four occasions, as far as the testimony of Anthony Stracuzza is concerned. You recall the testimony of Agent Davidson, as to his conversation with Karp, in which Karp admits to him that he came to the office at 26th Street at least six times, and he was there introduced to Tony Stracuzza sometime in September or October of 1952.

You also recall the testimony of Anthony Stracuzza, to the effect that Karp also was shown merchandise and original copies of manufacturers' invoices, so he could get some idea of the price that he had to pay.

Now, there was no testimony from Stracuzza or any other source concerning Benjamin T. Marco on (1557) the 26th Street office. As far as the Government knows, he at no time ever came to the office or purchased any merchandise from Stracuzza while he was operating under the name of A. Finkel. Karp's name first comes into this picture when Stracuzza had opened the place of business on 25th Street, under the name of A. Schafler.

Stracuzza testified that he had, as part of this operation, opened a bank account under the name of Charles Santangelo, at the Federation Bank & Trust Company, at 34th and Eighth Avenue, I believe he testified; that he used this bank account in which to make certain deposits of checks that were sent in by the Schaffers and by Hyman Karp. Stracuzza testified that the Schaffers sent their checks directly to the office, and that they were deposited by Stracuzza in the bank account, to the most extent.

However, there were a few occasions when he took several of those checks, had them cashed in a local supermarket by his sister-in-law, Marie Stracuzza, who is the wife of Mario Stracuzza, or had his wife, Dorothy Stracuzza, cash them or deposit them in her bank account, out in Long Island. (1558) He had two bank accounts, if you will recall, Lillian Schaefler and Dorothy Stracuzza.

Now, the operation essentially was the same on 26th Street that it had been on 33rd Street. The Stracuzzas

received a certain percentage, 55 per cent of the invoice price, and the truck-drivers received upward of 45 per cent of the invoice price. Berk received anything over 55 per cent.

During the course of time that the Stracuzzas were dealing under the name of A. Finkel on 26th Street, you recall the testimony of Anthony Stracuzza to the effect that there came a time sometime in March of 1953 that he made a shipment of zoot suits to Hyman Karp at the Fall River Bargain Center, in Fall River, Massachusetts. He heard nothing about that particular shipment until after he had closed the place of business on 26th Street, and had opened the new place of business under the name of A. Schafler, on 25th Street. You will recall his testimony to the effect that he recalled receiving a telephone call from Hyman Karp in the latter part of May 1953, in which he told you he had a conversation with Karp, to the effect that Karp told him, or asked (1559) him, rather, "Do you have protection?", and Stracuzza made the statement to him at that time, that he did.

Now, the office on 25th Street, under the name of A. Schafler, was opened by Anthony Stracuzza and his brother, Mario Stracuzza, sometime in the early part of May 1953, and it continued under operation until sometime in July, the latter part of July, I think July 28, 1953, when the arrest was made by agents of the Federal Bureau of Investigation. During the time that they were in operation under the name of A. Schafler, invoices were prepared under that name, and sales of merchandise were made by the Stracuzzas to each of the defendants now on trial before you—the Schaffers, Benjamin T. Marco and Hyman Karp; and that the merchandise was purchased by Mario from various truckdrivers in the garment area. He would meet these truckdrivers by appointment at certain designated locations; he would pay for the merchandise a percentage of the invoice prices, which was approximately one-third of the invoice price; would bring the merchandise back to Tony in the office;

Tony would then examine it, and (1560) decide which of the customers he was going to send it to, then send it off to each of the customers.

He would enclose with that box of merchandise or with those boxes of merchandise his own invoice, under the name of A. Schafler, and would include invoices or portions of the invoices, of the manufacturers' invoices, that had been received with the cartons when they were purchased from the drivers.

He testified that he began doing business with Max Schaffer and Norman Schaffer in the early part of May 1953, when he initiated the contact with Max Schaffer by calling him in Lebanon, Pennsylvania. Max Schaffer at that time informed Anthony Stracuzza that he did not wish to do business with him, but some time later, approximately, I think, a week, he met Anthony Stracuzza in the office of Sol Eisenberg, still at their same place of business, at 110 West 40th Street. There they had a conversation in the presence of Norman Schaffer, in which Tony told him that he was now in operation for himself; that he had had a fallingout, as it were, with Berk, and that he could give him merchandise at a suitable price, that the Schaffers (1561) had received from Berk while they were operating under the name of A. Finkel.

He initiated the business with Karp by a similar telephone conversation sometime in the middle of May 1953. Karp, of course, never came to the office of A. Schafler, but he did all his dealings over the phone. Stracuzza has testified that in each of the shipments he sent original copies of the manufacturers' invoices along with his invoice, in which he copied the style number, the description and the price.

The same testimony was given as far as Marco was concerned, with the exception that the business with Marco was initiated sometime in the early part of June 1953. Stracuzza testified that he had first called Marco on the telephone and reminded him of the fact that he had met

him while Marco was doing business with Eisenberg and Berk, on 33rd Street, and he mentioned the name of Kusnick, as a person who could vouch for him.

Marco began to do business at that time with the Stracuzzas under the name of A. Schafler, and continued up until the date of the arrest. The testimony from Stracuzza is to the effect (1562) that in each of the shipments he sent original copies of the manufacturer's invoice, along with his invoice, in which he copied the style number, the description and whatnot.

The only variance in any of the practice that was made with any of these defendants was the fact—and if you recall the redirect testimony of Anthony Stracuzza, he admitted that his procedure varied as to the defendants Max and Norman Schaffer, to the extent that he would make an alteration in the invoice prices from the manufacturer's invoice. In other words, he would place the discount, give effect to the discount on his invoice to the Schaffers, and not copy the exact prices, as he had done with Marco and Karp, and that during the period of time when he was operating on 25th Street under the name of A. Schafler, the Schaffers, Norman and Max Schaffer, came to the office approximately every week or ten days, were shown the original manufacturers' invoices, were shown the merchandise which they subsequently purchased, and that during this period of time, which was from the early part of May until the end of July 1953, that on most occasions both the Schaffers came to the place of (1563) business.

However, there were occasions when Max Schaffer came alone, and when Norman Schaffer came alone, and that there were three occasions, as far as the defendant Marco is concerned, as to when he came to the office. The first occurred in the latter part of June, when he came by himself. He examined the merchandise and was shown copies of the original invoices. The next occasion was the first week in July, where the same thing happened; and the third visit, the third and last visit, occurred in the

third week in July of 1953, when Marco came with his wife and was shown original copies of the invoices, and examined the merchandise.

Now that in substance is the testimony of Anthony Stracuzza.

While I will not attempt to show you, despite all the attacks that have been made on Stracuzza, as far as his veracity and credibility are concerned, despite what you believe or what decision you come to as to some of the testimony, I will tell you that the Government, by the other witnesses we have produced and by the documents we (1564) have shown you, or will show you when you retire to the juryroom to deliberate this case, we have proved each and every material element that concerns the guilt or innocence of these defendants.

Now, I will show you how we have corroborated by other means, by means of the testimony of other witnesses and the documents that we have produced, the essential testimony of Anthony Stracuzza.

First of all, let's start with the defendants Max and Norman Schaffer. You recall the testimony of Anthony Stracuzza, to the effect that this Government's Exhibit 52, the ledger book, was a record that he kept of all the shipments that he made to each one of these defendants. He would note the dates, the invoice price and the invoice number. He would strike out by a line directly across the page when that particular invoice was paid. If you will look at this book, you will find that there only remains two invoices that were unpaid at the time the Stracuzzas were arrested. He explained this as the reason why he did not prepare a duplicate copy of the original invoices in the same fashion that he did with the defendants Karp (1565) and with Marco.

Now I direct your attention to the same exhibit, Government's Exhibit 52, and you will see that in the invoices, listing the shipments to the Fall River Bargain Center, that quite a few of these invoices remained unpaid; that they remained—that they were paid to a large extent up until

June 17, 1953, and as far as Marco is concerned, they remained paid to a large extent up until July 16th.

You will recall the testimony of Stracuzza to the effect that he had difficulty with Marco and Karp; that they didn't pay him promptly as did the Schaffers, because when he sent a shipment out to the Schaffers, the Schaffers immediately came back with a check, and he had no necessity to prepare a duplicate copy of an invoice, such as is reflected in Government's Exhibit 53, the duplicate copies of the invoices to the Fall River Bargain Center.

He also told you that Marco would from time to time return merchandise to him, and include in that merchandise items of clothing that had never even been sent by Stracuzza. If you will recall the testimony now of Agent Burke concerning (1566) the five cartons of merchandise that he found in the office of Benjamin T. Marco on July 29, 1953, you will recall that subsequently, after the initial conversation with Marco, when Marco represented to him that he was returning each and every one of these five cartons, intact, back to A. Schafler, that Agent Burke went to the office of the freight terminal in Bluefield, West Virginia, examined that merchandise, after he had initially made an inventory for himself of just what the contents were, and he found therein items of merchandise that he had not seen originally, items that apparently had never been sent by Stracuzza to Marco.

Now coming back for a moment to the Shaffers, you will recall the testimony of Agent Jolley, that on the 27th day of July, the day before the arrest of the Stracuzzas, he followed Mario Stracuzza to the freight terminal and saw him deliver four cartons of merchandise that were addressed "Schaffers, Lebanon, Pennsylvania," that he placed on each of those cartons a symbol, "M27," the "M" standing for Agent Miller, and "27" for the date, July 27, 1953.

(1567) The following day you heard testimony that those four cartons, plus another, were delivered to the freight terminal office, or the station of the New Pennsylvania Motor

Express, in Lebanon, Pennsylvania. You heard the testimony of the clerk there at the station, who testified that on that morning, after a conversation with Mr. Phillips, the traffic manager, he, Mr. Snyder, set aside those five cartons of merchandise that were addressed to the Schaffers in Lebanon, Pennsylvania. Thereafter, he removed from one of those cartons a number of invoices, which he then gave to Mr. Phillips, the traffic manager. Mr. Phillips then testified that he took these same invoices and gave them to Agent Hutson, of the FBI, who was waiting in the terminal. Agent Hutson then photographed these invoices and returned them to Mr. Phillips. Mr. Phillips in turn gave them back to Mr. Snyder, and Mr. Snyder enclosed them in the original carton.

Agent Hutson then testified that he watched those four cartons, which had been addressed to Schaffers, Lebanon, Pennsylvania, being delivered to Schaffers' store at approximately (1568) 12 o'clock noon on July 28, 1953.

Now, it has been said that the defendant Norman Schaffer was completely honest and was fully cooperative with the FBI at all times; he aided the agents in making the inventory of the merchandise that he had received from A. Schafler; that he pointed out which merchandise and which coats and suits and dresses had come from A. Schafler. The argument has been made that the Government has not in any way shown that he had any knowledge that these cartons ever arrived at the Schaffers' place of business on the morning of July 28, 1953.

Mr. Coleman: Your Honor, I don't wish to object, but we never contended that the cartons never arrived.

The Court: Well, it is the jury's recollection of the facts, in any event.

Mr. Moran: (Continuing) At this point, Mr. Phillips, the traffic manager, identified the shipping documents pertaining to each of the five cartons. On the first page of those documents, which has been received as Government's Exhibit 193, there is a signature "N. Schaffer." You recall

then the testimony of Agent Hutson, that he went (1569) into the Schaffer place of business at six o'clock on July 28, 1953, after having seen these five cartons delivered to Schaffers' place of business at 12 o'clock noon.

Now this is where time becomes important in a case like this. We will go back to the same day, July 28, 1953, before we get back to this particular document concerning the delivery of five cartons of merchandise to Schaffers on that day. You recall that on the morning of July 28, 1953, Mr. Winisch, the FBI photographer, was across the street in the place where the FBI had a stakeout, let's say, of the office of A. Schafler at 48 West 25th Street. He testified that he saw Max Schaffer enter the office at approximately 11.15 on that morning and stay for approximately one hour, leaving at approximately 12.15; that during that period of time he observed Max Schaffer examine merchandise, examine what appeared to him to have been papers or documents that were taken from some of the boxes that appear in the motion picture, which has been identified and received as Government's Exhibit 186, where a group of white boxes were stacked alongside the window. Thereafter (1570) you heard testimony that Max Schaffer again appeared in the office of Stracuzza at approximately four o'clock that same afternoon, and there he encountered Agent Jolley, and Agent Howard Laduke, who were then proceeding to inventory the items of merchandise, and other things that were found by the FBI when they made the arrest at approximately 12.30.

Max Schaffer at that time was interviewed and gave a statement. You recall the statement in which he denied ever having done any business with A. Schafler, or knowing Tony.

Former Agent Jolley then testified that at approximately 4.30 in the afternoon Max Schaffer left the office.

Now, it doesn't take much imagination to speculate as to what happened between 4.30 in the afternoon, when Max Schaffer left the office, until 6 o'clock at night, back in

Lebanon, when the agents of the FBI, Hutson and the others, walked into the store. Max Schaffer of course was not aware of the fact that the FBI had observed his dealings with Tony Stracuzza across the street. He was not aware of the fact that they had taken motion pictures of him, examining merchandise, examining (1571) invoices that were contained in any of the cartons of merchandise, and it doesn't take much imagination for you to imagine what Max Schaffer did at that time. So that when the agents walked into the Schaffer store at 6 o'clock, Norman Schaffer wasn't taken by surprise; he knew what had happened in New York City approximately an hour or an hour and a half earlier.

It has been represented to you that he was completely cooperative with the Government; that he was completely forthright; that he told everything about this; he laid open his books and records—he showed everyone the merchandise.

Now, we will get to the receiving ledger, which has been identified and received as Government's Exhibit 199-B. There is an entry for the 28th day of July, from A. Schafler, with the numbers "302" and "304" therein. There is also an entry in Stracuzza's ledger for the Schaffers, the only ones that were marked unpaid, the same invoice numbers, "302" and "304."

Now, to get back to the early part of the day, when Agent Hutson opened those—rather, took photographs of the invoices that had been given (1572) to him by Mr. Phillips at the traffic terminal, you will see in the photographs that were introduced through Agent Hutson the A. Schafler invoices No. 302 and No. 304, with the addition of five manufacturers' invoices that were found in the cartons on that day.

Agent Hutson testified that in addition to making the photographs, which are pictured here in the Government exhibits, he removed a tag, several tags, from the merchandise that was found in one of the cartons. One of those

cartons relate to coats with the marking "Grosfeld," and the other one, pertaining to an item, Style No. 906, he testified, that he had seen on coats and some skirts in that carton. When he talked to Norman Schaffer that same night, at 6 o'clock, he testified that Norman Schaffer told him that the merchandise in those boxes consisted of blouses. There was no testimony or no statement from Norman Schaffer about the coats.

It has been argued to you that Norman Schaffer was completely cooperative at all times. Agent Hutson and other agents of the FBI then came back five days later and proceeded to make an inventory of the merchandise that was included in (1573) the Schaffers' store, that had been received from A. Schafler. At no time did they ever find the coats that were in those cartons on the morning of July 28, 1953.

In a subsequent interview with Norman Schaffer he was asked about the invoices described as No. 302 and No. 304, and also the invoices that were contained in those cartons on the morning of July 28, 1953. He denied knowing anything about them and denied that they had ever been received or contained within those cartons.

Now, I ask you, is that the testimony of a person who is completely cooperating with the Government, who is completely honest and aboveboard?

In the course of the cross-examination of Agent Hutson, he stated to you that after the original visit to the premises of Schaffers' store on the evening of July 28, 1953, the agents only watched the place periodically until they made a complete inventory beginning around August 5, 1953, and he testified on cross-examination that they did not remove—they did not see the Schaffers remove items of merchandise during that period of time, (1574) with the inference for you to take of course that if the Schaffers were dishonest, they were trying to hide something, that they would immediately have gotten rid of any of that merchandise that they had received from Schafler.

Now, the most foolish thing that any of these defendants could have done was to try to dispose of any of the merchandise that they had received. They were not aware at the time how much the FBI had on Tony and Mario Stracuzza. They thought by making a complete—or what seemed to be a complete and forthright statement and a complete examination of all their books and records that they would convince the FBI and the Government that they had no knowledge that any of this merchandise was stolen, because they did not realize that the Government had photographed the invoices that were contained in the five cartons—in the four cartons, rather, that had come to the Schaffers on the morning of July 28, 1953. So I say to you that Norman Schaffer, in his testimony, in his statements to the FBI, was not telling the truth. He hid the one thing, he held back on the one thing that would have shown that he had actual knowledge (1575) of what this operation was all about.

The next witness called by the Government pertaining to Max and Norman Schaffer was Special Agent Mabes, of the FBI, who testified that at my direction and request he had analyzed and made a summary of the purchases or the merchandise that was reflected in the Schaffers' invoice books, No. 199-A and 199-B.

Now, sometimes figures can be very revealing, and I think that that statement is very applicable to this situation.

Government's Exhibit 200, which Agent Mabes prepared, revealed that during the course of time, from September 1952 up until the arrest of the Stracuzzas on July 28, the Schaffers, Max and Norman Schaffer, had purchased approximately sixty-odd thousand dollars worth of merchandise, and that their overall purchases from the Stracuzzas, operating under the name of A. Finkel and under A. Schafler, and from Eisenberg and Berk, amounted to 26.92 per cent, and in the last two months, June and July of 1953, that percentage was 48.91, and in July it was 54.37. (1576) Now Mr. Coleman in the course of his summation

says, directing his attention to the ladies in particular, as I recall it, that we all get bargians from time to time; that the stores here, Macy's, and the other places, they have sales in which you can make a very good saving from time to time, as they have close-outs at various times during the year. But I ask you, considering the fact that Stracuzza testified that the Schaffers were purchasing this merchandise at 35 per cent wholesale, that this process did not occur at odd times during the year; it occurred each and every week, from September 1952 until July 1953, with the exception of the time that the Stracuzzas were out of operation in April, and the early part of May 1953.

Now, I ask you, if this practice of getting substantial discounts is not unusual, and it is a regular practice in the garment area, why did the purchases continue to mount percentagewise from these four sources? Why couldn't this merchandise have been purchased from someone else? I will tell you why, because they couldn't get this merchandise at the ridiculous discounts that the Stracuzzas were giving it to them.

(1577) Now going back again to July 28, 1953, the day of the arrest, Agent Miller testified that during the course of the inventory of the office of the Stracuzzas on the afternoon of July 28, 1953, the FBI found a number of cartons, one of which was a sealed carton addressed to the Fall River Bargain Center, in Fall River, Massachusetts, and there was enclosed therein some invoices, manufacturers' invoices, with the invoice of Schafler, and he said to you in effect, that even if Hyman Karp received invoices of a similar nature at some prior time, that they really have no significance, and I believe that Mr. Katz made a similar argument to you.

Well, I ask you this question: If these manufacturers' invoices had so little significance, why didn't Norman Schaffer produce them for the examination of the FBI? Why did he deny that he had ever known about them or

that Schaffers had ever received them? I ask the same question concerning Benjamin T. Marco.

You remember when Agent Burke went into the office or went into the store of Benjamin T. Marco on the 29th day of July 1953, Marco stated (1578) to him at that time, after Burke had examined the five cartons of merchandise that he had received from Schafler and Berk, he found two of the invoices, the manufacturers' invoices, he admitted that on one prior occasion he had received a similar invoice, which he did not produce. He did not tell Agent Burke, which Agent Burke subsequently found in the trash on that very morning, about the invoice of Adelaar Bros. If such an invoice is so immaterial, means nothing, why did Benjamin Marco think that he had to lie about it?

Now, Hyman Karp, getting back to him for a moment. You recall that there was a private detective, Mr. Connell, who testified that on May 27, 1953 he had a conversation with Karp, in which he informed Karp that certain of the merchandise that he had received, namely a number of boys' zoot suits were believed to have been stolen, and were believed to have been manufactured here in New York City, and that at that time Karp produced a manufacturer's invoice—rather, an invoice of A. Finkel, which the Government placed in evidence as Government's Exhibit 212. You recall the date (1579) of the invoice being March 10, 1953, and you recall Stracuzza's testimony to the effect that sometime in the latter part of May 1953, after he had begun dealing with Karp, he received a telephone call, which I previously alluded to, and they had a conversation to the effect as to whether Stracuzza had protection. You recall that when Mr. Connell, the private detective, testified that Karp called A. Finkel in his presence and got no answer, I tell you ladies and gentlemen that he knew that he was not going to get an answer, because he knew that A. Finkel had gone out of business approximately two months before.

He also knew, as Agent Davidson has testified to you, that Tony Stracuzza, "Mr. T", was the same person with

which he had done business at A. Finkel, and that Tony Stracuzza had called him in the early part of May and told him that he had severed his connection with Berk and was operating under the same—was operating under a different name, A. Schafler.

This supposed clean breast of the affair concerning these zoot suits was a fraud on the part of Hyman Karp. He knew he wasn't going to get (1580) any answer from the telephone at A. Finkel, because he knew the place was out of business. He knew right then and there that the merchandise that he had received from A. Finkel was stolen.

Now Mr. Steinberg tells you that he kept books and records concerning his dealings with both A. Finkel and A. Schafler, and each of the defendants made payments by check, kept careful records, which they produced for the FBI, and so forth.

Let's not forget for a moment, which I am sure you are all well aware of, that there is such an organization known as the Internal Revenue Service, which makes a practice from time to time to call on businessmen and ask them to produce their books and records concerning their dealings. These defendants had to keep books and records to protect themselves from any accusation that might be made against them by the Internal Revenue Service. The fact that they kept books and records is of little or no weight. They had to have some record of their dealings with A. Finkel and A. Schafler.

But getting back to this invoice again of A. Finkel, Karp knew that the business had closed; that he was not going to get an answer, and therefore, (1581) after the detective left he had this conversation with Tony, in which he inquired as to protection, and he was assured by Tony Stracuzza at that point that he did have protection, and that Karp had nothing to worry about.

Do you believe if Karp was the honest businessman that he was supposed to be, that he would have continued to

do business with Tony Stracuzza, a man who had sent him stolen merchandise?

Now, back to Marco. You will recall at this conversation on July 28, with Agent Burke, when Burke walked into the office in the store of Marco and announced the reason for his presence, Marco had first said to him, "Well, I don't know what this is all about; this is all news to me."

And that after Agent Burke had examined the five cartons and made an inventory of what was contained in them, Marco said to him, "Well, I really know what this is all about because I received a telephone call this morning from Stracuzza's being arrested, arrested the day before."

Burke then told him that he believed that each of the cartons that Marco had received were (1582) stolen. Marco then said, "Well, I will send it all back."

Burke, however, didn't take him at his word, fortunately, because he made an inventory of what was contained in that carton, which we have offered as our Exhibit No. 203. Those notes reflect each and every item that were in those cartons, the two Schafler invoices No. 305 and No. 306. Burke later testified that on a subsequent examination at the freight terminal he found a number of items missing, which he noted in ink on the righthand side of each of those pages.

After finding that this merchandise had not been returned, he again went back to Marco, and Marco said to him, "Well, I admit that I didn't turn it all back; I held back some pajamas because I wanted to see that my freight charges were paid."

Thereafter Burke again went back to the store and found in different boxes some of the items that were originally in the cartons, 305 and 306, and he has not found to this day, the items that were in those 305 and 306 invoices.

Now, is that the act of an honest man, who was trying to cooperate with the Government?

(1583) Stracuzza has testified that his business dealings were initiated by a telephone call to Marco in the early part of June 1953.

In Marco's statement there is a statement to the effect that he did receive a telephone call from Stracuzza in the early part of June 1953, in which the name of Kusnick was mentioned. You have heard testimony from several of Marco's employees, in which they have stated that they recall a conversation with Marco to the effect that the business with A. Schafler was initiated by a telephone call, and that the name of Kusnick was mentioned as the person who recommended A. Schafler.

Now, we have attempted to trace, if you recall the testimony of Agent Miller, that a trash cover was made on the 23rd, 24th and 25th day of July 1953, at Stracuzza's office, that when Agent Miller was recalled to the stand, after all the other witnesses had testified, he then traced by means of the various schedules that were prepared the invoices that were found in the trash, and also several of the invoices that were found in the room on July 28, 1953, when the arrest was made; and I wish at this time to trace a number, (1584) several of those invoices for you now, to show how we were able to determine that this merchandise actually was stolen and how it actually got to the office or to the place of business of each one of these defendants.

Your Honor: I wonder if we might have a short recess?

The Court: Take a short recess.

(Short Recess.)

The Court: Proceed.

Mr. Moran (Continuing) Now, Agent Miller testified that the FBI first learned of this operation around the 1st of July 1953. As you realize now, the operation had been in effect since the early part of May 1953, at least so far as A. Schafler was concerned; that the A. Finkel operation had completely stopped, and that around the 17th of July

1953 Miller and the other agents began to make the surveillance of the office at 48 West 25th Street and continued there until the 28th of July 1953, when the arrest was made.

Miller also testified on one or more occasions that he followed Mario to various places in the Garment District and saw Mario purchase (1585) various cartions from drivers, and trailed Mario back from the point where he had met the driver to the office, and then went with him on one or more occasions to the freight station where he saw him deliver packages addressed to the three defendants, the Schaffers, Max Schaffer, Norman Schaffer, Benjamin T. Marco and Hyman Karp; and that the trash cover that was made in the course of this investigation revealed certain invoices or copies of invoices that had apparently come from Stracuzza's office.

Now, as far as those invoices are concerned, you recall that Anthony Stracuzza testified that when he sent a copy of the original manufacturer's invoice, what he did on most occasions was to cut off the top of the invoice and send the bottom half of the invoice to one of his customers. However, there were a few occasions when he sent the entire invoice, but merely obliterated or struck out in some fashion the name of the consignee, and he cut from the lower corner, either the left or righthand corner of the invoice, the invoice number. Most of these original manufacturers' invoices had more than one copy. Sometimes they (1586) had two; sometimes they had three. So what he did in that event was to send a portion or one entire copy with obliterations on it to the customer and retain in his possession until the bill was paid the other copy or copies, at which time when it was paid he would tear it up and throw it into the trash.

Now, Miller testified for you that on those three days, namely, the 23rd, 24th and 25th of July, he recovered and pasted together certain portions of the invoices that had been picked up out of the trash, and one of those invoices that were recovered on the 25th day of July 1953 was an

invoice that was marked and received as Government's Exhibit 177, which was an invoice of Grosmanfeld.

Now, you will recall when Agent Hutson was on the stand I had him compare for you the prices in this invoice, and all the other information that appears thereon with the photograph that he took in the New Penn Motor Express Company on the morning of July 28, 1953. I think if you will compare those, as far as the writing, the same lines, the way they appear upward from the lower left to the upper righthand corner, all the (1587) information is there on the invoice, with the exception of the consignee's name. If you look closely you will even find the name, or rather, the date of the invoice.

Now I ask you, considering again Tony Stracuzza's testimony, is this a lie, or has the Government corroborated the testimony of Anthony Stracuzza to this extent?

On the same day other invoices were recovered, which were pasted together, and they were received as two exhibits against the defendant Benjamin T. Marco. There were two invoices there of Roberta Dresses, which were received as 177-C and 177-D.

Now, if you will compare the returns on the search warrant, and the other items of merchandise, which Agent Burke made in his examination of the merchandise found in Marco's store, you will find a recovery of the same number of dresses under the same style number, and so forth, Roberta Dresses, that are reflected in these two invoices, and if you will compare the Marco invoice, rather, the A. Schafler invoice to Marco, you will find on that invoice the same style number, the same price (1588) and the same total price, and I ask you if the testimony of Anthony Stracuzza to the effect that he, as far as Marco is concerned, when he wrote his invoices, the A. Schafler invoices, when he says to you that he copied the same style number, the same unit price and the same quantity, is that testimony a lie or has the Government corroborated it?

Now, on the same day another invoice was recovered, and that pertains to the defendant Hyman Karp. That is an invoice of the Glamour Blouse Company, which has been marked here 177-F.

Now during the course of Agent Davis's testimony I had him compare for you the last known invoice received by Hyman Karp, which was invoice No. 293, and I had him direct his attention to the last item here, style No. 2472, 15 dozen at $22.08 a dozen, or a total of $331.20, and also to this invoice that was recovered in the trash on the 25th day of July 1953 by Agent Hutson, and there he compared for you this invoice, plus this invoice of Stracuzza, in which the same information as to style number, as to price and total price are reflected in this invoice.

(1589) I again say to you, has not the Government corroborated by its other witnesses and its own documents, other than the testimony of Anthony Stracuzza, that what he says to you pertaining to his dealings with these defendants, is essentially true, despite what inconsistencies you may have found or may have been pointed out to you during the course of his cross-examination?

Now, I have only taken one day. I don't think it is necessary to belabor the fact that on the 23rd and also on the 28th, when copies of invoices were found in the office, that they were traced to the various invoices that were sent to each one of the three defendants.

Thereafter, you heard testimony from the Pennsylvania Railroad man, Mr. Rule, and Mr. Groton, who was the assistant chief in charge of the freight claims section of the Pennsylvania Railroad, what the practice is of the Pennsylvania Railroad pertaining to merchandise that was lost in transit, that is delivered to the Pennsylvania Railroad for shipment from New York to various places outside of New York. A number of claim files were introduced at that time. Mr. Rule then went (1590) through each claim file and told you that as far as the Pennsylvania Railroad was concerned, that these records indicated that the mer-

chandise described in their claim folder was actually delivered to the 37th or 38th Street platform of the Pennsylvania Railroad, and that when those freight cars were opened at the place of delivery, the merchandise was gone; and that on the basis of the investigation made by the Pennsylvania Railroad, as reflected in these files, the Pennsylvania Railroad was convinced that a claim was legitimate and a payment was made.

We then presented four schedules, three of which pertain to Max and Norman Schaffer, one to Benjamin T. Marco, and one schedule here that pertains to Hyman Karp.

You recall now the testimony of Agent Hutson that in the course of his conversations with Norman Schaffer and the other employees in the store, that he was told that the merchandise that Schaffers of Lebanon, Pennsylvania, had received from the Stracuzzas had been given a code number "82," and that this code number was placed on each one of the garments that they had received.

(1591) Now, if you will look at any of the coats there on the rack, that have been introduced in evidence here, you will find in the lower lefthand corner a symbol, "82."

The next date or the next number was given to Agent Hutson to be the date that the merchandise was received. In other words, the 6th day of July, "68," and the invoice, rather, the price that Schaffers was going to sell it.

Now, what we have done in this chart, and the procedure was followed throughout, was to take this number that appeared on the green tag, or the tags that appear on each one of these garments, and trace by investigation with various manufacturers here in New York City—and we had six of them come to the stand here and identify each one of their coats. They were able to tell us that they made a shipment on a certain date; that they had documents to show it; that they had their bills of lading, and whatnot. We have then listed their invoice date, and invoice number, the number of items that they shipped under a particular invoice; the name of the legitimate customer or consignee,

and the number of items that were (1592) received by Schaffer, and the date that Schaffer received them, and in the final column here, on the right, the particular claimfile of the Pennsylvania Railroad.

By this means we were able to identify the merchandise as far as it pertains to those coats and other items that are reflected in this schedule. Now, the same information is reflected in the other three schedules, and I think you have a general idea of what we have done here in tracing this merchandise.

Now, a claim has been made, or an argument has been made to you that this arrest occurred in 1953, and why has the Government taken all this time to bring these people to trial? One reason is that the enormous quantity of merchandise that was recovered in this case required an intensive investigation by the FBI. All we had was a symbol on a coat, without knowing the name of the manufacturer. We had to bring in all the manufacturers from New York City, ask them if they could identify it, if they could could they tell us whether they had a loss on a particular date. Now, that takes an awful lot of time. That is (1593) the principal reason why this case has been delayed. But whether it has been delayed or not is not something that need concern you. The only thing that need concern you is the guilt or innocence of these defendants that are on trial before you.

Now that essentially is the case that the Government has presented to you.

I fully realize, and as you probably do, too, the Government doesn't have a choice of its witnesses in a good many of its cases. It would be nice if we could call FBI agents, and those were the only type of people we could call. Unfortunately, we can't do it. We have to call people who sometimes are no better and sometimes a lot worse than the defendants on trial. It is up to you, having seen them, to weigh their testimony, to consider their answers, how they have answered them in cross-examination, to come to some decision as to the guilt or innocence of the defendants.

Now, we have shown you three exhibits that we have produced here that the testimony of Anthony Stracuzza, to the extent of his dealings with these defendants; under the name of A. Schafler, (1594) is correct, because we have traced for you, and if you will examine these invoices that were found in the cartons, you will see a number of invoices where the top half is there, the bottom half is missing, and if you want to trace from these various packages in which invoices are contained, you will be able to trace from those various pairs to a particular invoice of each one of the defendants.

Getting back for a moment to the statements of each of the defendants, you have the statement of Max Schaffer on the day that he talked to the agents in the office of Anthony Stracuzza that afternoon. You have heard through the summary of Agent Mabes, that Schaffers in Lebanon, Pennsylvania, had purchased over $60,000 worth of merchandise prior to the 28th day of July 1953; that Max Schaffer had known Tony Stracuzza for almost a year prior to the time—over a year prior to the day that he was interviewed by the FBI. He had come up there, either to A. Finkel's office, to A. Schafler's office or to Berk and Eisenberg's office, every week or every ten days. Yet, when he was questioned by the FBI on that day he denied that he knew him or did any business with him.

(1595) Now, I ask you, is that the statement of an honest, upright citizen of the community, who we look forward to as our leader in a situation that we face today? Or is it the statement of a man who is caught, and just like Stracuzza, when he was arrested on the day, he lied to the FBI, just like Max Schaffer did.

And also Norman Schaffer, when the FBI asked him about those invoices that they had photographed, did he tell them the truth? He hadn't seen those cartons, but he lied about it, because he knew that if the agents had ever gotton hold of those invoices, his goose would have been cooked. He cooperated, sure he cooperated with the FBI,

because he did not realize, as Max Schaffer did not realize, that the motion picture that they had taken in the office on the morning of July 28, 1953 completely corroborated Stracuzza.

Now, he has testified that Max and Norman Schaffer came up every week or ten days. The Chinese have a saying that a picture is worth 10,000 words. I ask you, having looked at that motion picture, if that doesn't corroborate Anthony Stracuzza one hundred per cent, insofar as his (1596) dealings with Max and Norman Schaffer are concerned?

Now, as far as Hyman Karp is concerned, he had direct knowledge that A. Finkel had sent him stolen merchandise. Yet he persisted in dealing with the same man whom he had dealt with under the name of A. Finkel, when Tony Stracuzza sent him merchandise under the name of A. Schafler. He asks you to believe that he did not know the merchandise was stolen. I say to you that we have corroborated Anthony Stracuzza to the extent that we showed you in the carton of merchandise that was found in the office on the 28th day of July 1953, that that carton contained original invoices of the manufacturers, and that I think you can believe, on the basis of the evidence that we did show you, that each and every one of those shipments that were sent to Karp had original invoices in them.

Now, as far as Marco is concerned, he finally, after a number of interviews with Agent Burke, admitted that the person who called him on the morning of July 29th, was Sol Eisenberg, a name you have heard all throughout this case. He also denied at any time that any of this merchandise that (1597) he received, that he or any of his employees cut labels, removed labels. You have also heard the testimony of one of his own employees, who stated that he had received the labels from Kusnick sometime in 1951, and that Kusnick recommended Anthony Stracuzza.

You have heard Stracuzza testify that Kusnick was one of his own customers, and that Kusnick was one of his, Berk's and Eisenberg's customers back in 1951.

I say to you that on the basis of all the evidence the Government has produced in this case, that we have met the standard imposed upon us, namely, that the guilt of each and every one of these defendants has been established beyond a reasonable doubt—beyond any doubt—and I think in carrying out your oaths as jurors, you can safely and properly return a verdict of guilty as against all four of these defendants.

Thank you.

The Court: Ladies and gentlemen, we will adjourn now until tomorrow at 10:30, at which time I will charge you.

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(1624) **CHARGE OF THE COURT.**

The Court: Ladies and gentlemen of the jury:

I want to join with the lawyers and thank you for your very obvious courtesy and attention. I want to thank you, too, for being so punctual, and to congratulate you on being so healthy.

We have now arrived at the most important part of the case, and that is the part in which you are going to decide whether each defendant is guilty or not guilty of the crime charged in the indictment against him. I know that you will approach that problem with all of the seriousness that you can muster, because service as a jury man or woman is one of the great American civic duties, and I know you will approach the problem without sympathy or bias or prejudice. I suggest to you that you analyze the facts the same as you would want twelve (1625) other people to analyze the facts in which you were involved, or in which you think the American people are entitled to have you analyze the facts.

Now, the posture of the case as it is being submitted to you today is, as I explained to you on Thursday, considerably different than when it started. The only questions that you are concerned with are the guilt or innocence of each defendant as they are separately charged in Counts 1, 2 and 3 of the indictment, No. 145-232.

Bear in mind that an indictment is merely an accusation of a crime and never is it any evidence of the commission of that crime.

There is no charge of conspiracy between the defendants and anybody else. I removed that accusation from the case.

You are limited, in fact you are required to consider the evidence against each defendant separately and as it relates to him under the particular charge of which he stands accused. That is, you are not to take into considera-

tion any proof against one defendant and apply it by inference or otherwise to any other defendant. In short, even though there are four defendants on trial, (1626) as against each you must consider only the evidence that relates to him, and not view it as a sum total of all the evidence merely because they are charged in one indictment and have stood trial together.

The fact that Max and Norman Schaffer are partners doesn't give you the right to consider evidence against one as evidence against the other.

Now the charge against each defendant, together with the three Stracuzzas, Anthony, Mario and Dorothy, is substantially the same, except for the dates and the places between which the transportation is alleged to have been had, for example, that the three Stracuzzas and each defendant transported or caused to be transported in interstate commerce merchandise having a value in excess of $5,000, knowing the same to have been stolen.

With regard to Count 1, which relates only to the three Stracuzzas and to Max and Norman Schaffer, the dates are May 15th to July 27th, 1953, and the transportation is alleged to have occurred between New York and Lebanon, Pennsylvania.

Count 2, which relates to the three Stracuzzas and the defendant Benjamin T. Marco, (1627) the dates are June 11th to July 27th, and the places, New York and Bluefield, West Virginia.

Count 3 relates to the three Stracuzzas and the defendant Hyman Karp and the places are New York and Fall River, Massachusetts.

Each crime that is charged has the same elements, and the burden of proving each element against each defendant is on the Government. Those elements are:

(1) Were the goods in fact stolen?

(2) Did the defendants know that they were stolen?

(3) Did they wilfully and knowingly transport or cause to be transported such merchandise; and

(4) Was the value of the goods $5,000 or over?

Now, as I recall the evidence—and bear in mind that my recollection of the facts is not controlling; your recollection is supreme—Anthony Stracuzza, who has pleaded guilty to this indictment and to another similar indictment, but who has not been sentenced, testified that for a period commencing some time in 1952, up to the day of his arrest on July 28, 1953, he was engaged in the business of (1628) selling stolen merchandise and lending money at usurious rates. He went into the stolen merchandise business, he said, at a small salary to start, and a sort of commission man or, as he put it, a 10 per cent man, and then later for his own account.

Prior to getting into this nasty business, he said he worked in the trucking industry for a number of years and had gambled successfully. He said he also pleaded guilty to stealing two packages that were moving in interstate commerce and received a suspended sentence from Judge Ryan. This theft took place in May 1956.

He testified that he met each of the defendants in 1952, in an office building operated by Sol Eisenberg, where he was working, changing tags on garments that would be brought in by truckdrivers. He also put the merchandise in cartons, he said, and shipped them and sometimes delivered them to customers.

He testified further that he was associated in the same business at 1133 Broadway, under the name of A. Finkel, from September '52 to March '53 with Hyman Berk and his own brother, Mario.

He said he maintained a bank account under (1629) the fictitious name of Charles Santangelo.

He said it was his practice to pay the truckdrivers 45 per cent of the manufacturer's invoice price for the goods, selling it for 55 per cent and splitting the 10 per cent profit with his brother.

In May of '53, he said he went into business under the name of A. Shafler, at 48 West 25th Street, and con-

tinued until July 28, 1953. It was his testimony that he sold ladies' and children's garments to each of the defendants, which he and his brother bought from truckdrivers, and shipped such merchandise by Railway Express or by U. S. Packing.

He sold the merchandise to the Schaffers at 65 per cent of the manufacturer's invoice price; to Marco at 60 per cent, and to Karp at 55 per cent.

He testified that he would copy the manufacturer's invoice on his own printed invoice, copying the style number and the price, and that he would enclose the manufacturer's invoice with his own after he scribbled out, as he described it, the name of the consignee and the manufacturer, although he said the bottom of the invoice usually had the manufacturer's name on it and was still (1630) legible.

He explained he kept a copy of the invoice he sent out in a sort of a ledger, and he described how he would cross out the entry when the bill was paid.

As to the defendants Marco and Karp, he said he also kept a sort of notebook copy of the invoices he sent to them. He admitted that he did not tell any of the defendants, or for that matter any of his customers, that the goods were stolen.

A number of FBI agents testified concerning surveillances that they had made and conversations they had had with the defendants, and the Government has introduced written statements signed by such defendants.

Mr. Miller testified to the surveillance that he and other agents conducted of the premises of Anthony Stracuzza, the collection and piecing together of rubbish from this premises; the activities of Mario Stracuzza and his red truck, and the scene on the premises on the day of the arrest of Stracuzza on July 28. Toward the end of the trial he was recalled and identified certain schedules and inventories of goods that were found on (1631) the defendants' premises, and traced the identity of some of the garments by the identity of similar style numbers on manufacturers' invoices.

The Government also called certain former employees of the defendant Marco, who testified to conversations he had with them, and other employees, and to the absence of labels on some garments and the sewing in of labels on others.

The Government also called certain employees of the Railway Express, who identified their files in connection with the proofs of loss and the payment to the different manufacturers. Some of the manufacturers were called, and they identified their garments, and all of the counsel for the defendants and the Government have entered into a rather detailed stipulation. These stipulations have been read to you, and in substance it has been agreed that the aggregate value of the merchandise purchased by each defendant during the time charged in the respective counts of the indictment was over the sum of $5,000, although no particular shipment on any one day equaled that amount, but in fact was less than $5,000.

The defendants and the Government further (1632) agreed that if the manufacturers were called, they would be able to identify their respective garments as having been manufactured by them or by one of their contractors, but they would be unable to identify a specific garment as being the specific garment shipped under a specified invoice.

They also agreed that the railroad employees, if called, would identify the claim file relating to specific shipments, and that such files were records kept by the railroad in the regular course of its business.

None of the defendants took the stand in his own defense. In this connection I charge you that you cannot draw any inference from their failure to take the stand, nor can you even discuss it in your deliberations in the jury room. They are entitled to a presumption of innocence, and the burden of proof is on the Government throughout the trial and never shifts at all to any defendant.

In connection with the elements of the crime that is charged, one of the principal elements is that of knowledge.

In order for the Government to prove its case it must show beyond a reasonable doubt that each of the defendants knew that the (1633) goods they purchased were stolen goods. The Government argues that it has sustained its burden on this element of the crime by circumstantial evidence.

You will recall that Stracuzza testified that he did not tell any of the defendants that the goods were stolen, although he testified that all the goods he sold were in fact stolen. The Government claims that the circumstantial evidence from which you can properly draw the inference against each defendant is the sum total of a number of different facts and circumstances.

For example, as against all the defendants, it says that the manufacturers' invoices, which Stracuzza says were included in the shipments, were an obvious indication that the goods were stolen, because of the manner in which they were obliterated or torn; also, that the prices that the defendants paid were so out of proportion to the true market value, and that the copying of the style numbers from the manufacturer's invoice was a further indication.

It says, as to those defendants who were actually in the premises of Stracuzza, they must (1634) have known or at least should have known from the condition of the premises and the manner of the display of the goods that they were not legitimate, but stolen.

As against both Schaffers, the Government argues that both were present in the premises, and both must have seen the invoices when they arrived in Lebanon, in the boxes, except of course that Max Schaffer could not possibly have seen the boxes that arrived on July 28, since he was in New York.

The Government says that both Schaffers came to the premises pursuant to a request that Stracuzza made to both of them when he met them on 40th Street. It also claims that the statement that Max Schaffer made on the day that Stracuzza was arrested, which it claims was a

false statement, is also indicative of guilty knowledge on the part of Max Schaffer.

As to the defendant Marco, who Stracuzza said was in the premises on 25th Street three times, the Government argues that Marco knew the goods were stolen because of Stracuzza's phone call to him in June of 1953, saying that he was recommended by Fred Kusnick. The Government also asks you (1635) to imply knowledge from the letter that Marco wrote to Stracuzza.

As to the defendant Karp who, according to Stracuzza's testimony, was never present in the premises on 25th Street, the Government argues that he had knowledge because Stracuzza telephoned him in May of '53, identifying himself as "Tony from 33rd Street", and Karp's question to him, whether or not he had protection in New York, as he did not want to get into any trouble. This conversation, according to the Government's argument, was in May of '53, at the time of the zoot suits question.

Another circumstance, the Government says, is indicative of knowledge insofar as Karp is concerned, is that Stracuzza testified that once when Karp was going on vacation, he told Stracuzza to keep sending the shipments.

Consequently, the facts and the circumstances relating to each defendant can be considered by you in determining whether or not each defendant knew that the goods were stolen.

In this connection, every fact and circumstance must be scrutinized by you to determine whether they are sufficient to cause an actual belief on (1636) each defendant's part that the goods were stolen. The defendants, on the other hand, argue that no inference can reasonably be drawn from any of the facts and circumstances in this case, that any defendant knew that the goods were stolen.

Each defendant argues that when confronted by the FBI he voluntarily assisted and helped in making inventories, in turning over invoices and other records, and

actually returning the goods, and that such actions are not the actions of a person who knew the goods were stolen.

In connection with the defendant Karp, it is argued that when he went to the private detective, he didn't have to go and he voluntarily went and he voluntarily secured the invoice and the check to prove that he bought the zoot suits without knowledge. He said that this is indicative of his ignorance of the illegitimate source of the goods.

He also argues that since the FBI found no manufacturer's invoice in his trash, that that was indicative of the fact that he received none, and hence could not be put on any notice of any kind.

In connection with the defendant Marco, it is argued that the fact that he returned a large (1637) quantity of goods before Stracuzza was ever arrested is indicative of the actions of a person dealing in good faith with a supplier, without knowledge of the fact that the goods were stolen.

In connection with the letter he wrote on the hotel stationery, it is argued that that too was indicative of the absence of any criminal knowledge, because that is where the man lived. He argues, too, that the purchase of Donnybrook clothes from the Donnybrook manufacturers is also proof of his lack of guilty knowledge.

In connection with the testimony that he told certain of his clerks that the goods were stolen, it is argued that this is attributable to his humorous nature.

Defendant Max Schaffer argues that the statement he made to the FBI is not indicative of guilty knowledge, but it was a foolish thing to do, that many innocent men say foolish things when confronted suddenly.

Both Schaffers argue that since Stracuzza kept no duplicate invoice book for them, that fact is indicative of the fact that Stracuzza never sent them any mutilated invoices; and the Schaffers were (1638) so honest there was proof in this case showing that they corrected an invoice to the benefit of Stracuzza, rather than have him short-change himself, and that that should create in your mind

the fact that they had no guilty knowledge, and no inference can be drawn, they argue, because of the price of the goods, since that is quite common with this type of merchandise, and the cutting of prices was the real basis for honest competition among businessmen.

In short, they all say that all of the inferences from all of the facts point to complete innocence, and that each had no knowledge that the goods were stolen.

One of the other elements of the crime charged against each defendant, and an important element, since without it the crime does not rise to the dignity of a federal crime, is that the Government must prove that the shipments of the stolen merchandise were in excess of the value of $5,000. In this connection, the stipulation between the attorneys states that the total shipments covered by each count are in excess of $5,000. (1639) The statute that Congress passed says, "The aggregate value of all goods and merchandise referred to in a single indictment shall constitute the value thereof." This means that under each count addressed to each defendant and to the Schaffers jointly, you may rely on the stipulation, in so far as value is concerned, that the value of the goods and merchandise exceeded the sum of $5,000, even though no individual shipment was of a value that high.

The stipulation made as to the value of the total shipments during the times in question does not mean that the attorneys have agreed that the goods were stolen, or that they knew it was stolen. Those are two elements that the Government has to prove, and you have to be satisfied on.

There is also a question whether each defendant transported or caused to be transported merchandise in interstate commerce. It appears to be undisputed as to each defendant that shipments were seized in Lebanon, Pennsylvania, Bluefield, West Virginia and Fall River, Massachusetts. One of the questions you must decide is whether each of the defendants wilfully and knowingly transported or (1640) caused to be transported the goods between New York and the cities where they each were in business.

A person may be held to be a principal under the federal law when he aids or abets or counsels or commands or induces or procures the commission of an offense against the United States. Congress has said that whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Now, in an effort to help you come to a conclusion on these issues, there are certain rules which are the result of centuries of experience and which are designed to assist you in your very important duty as jurors, and one of these first rules is that you ladies and gentlemen and you alone are the sole judges of the facts, the credibility of the witnesses and the weight to be given to their testimony. What counsel for either side have said, in fact what I have said, has no bearing or relevancy on it. You and you alone are the sole judges of the facts. As a matter of fact, what rulings I have made during the trial or on questions of evidence are my (1641) concern and not yours, and I hope it didn't indicate to you how I feel about the case, either as to the law or the facts. I have no feeling, and you should disregard my rulings completely.

Now, how do you determine the credibility of witnesses? You do that by the same standards that you apply in determining the credibility of anyone that you talk to in your day to day affairs. It doesn't mean that we are passing necessarily on whether that person was lying or was truthful, although it may be that. Credibility is something more. You and I frequently decline to believe someone we would not accuse of lying. We decline to believe him or her because we doubt his or her accuracy of recollection, or because we think he or she has a bias or an interest which, quite unintentionally, and even perhaps unconsciously, colors his or her views or slants his or her judgment.

You can consider the conduct of the witnesses on the stand. Were they frank or evasive? Were they biased

or impartial? Were they interested in the result? What relationship did anyone have to another? Did any one of them testify falsely to a material fact?

(1642) If you find that a witness testified falsely to a material fact, you may disregard the matter that you do not believe and accept the rest which you do believe. You may consider the strength or weaknesses of the witness' recollection, and you may accept what you believe of a witness' testimony and reject what you do not believe. The test of credibility applies in this case to all the witnesses you have heard.

There was also the matter of corroboration. A witness is said to be corroborated when his or her testimony, either in whole or in part, is supported either by the testimony of another witness, in substantial agreement with him, or by other circumstances pointing to the truth of his or her testimony. In many courts in this country there is a requirement of law that the testimony of an accomplice must be corroborated in order to convict the defendant on trial. No such rule exists in the federal court. I nevertheless caution you to scrutinize carefully the testimony of the witness Stracuzza.

Now, it has been argued by some of the (1643) counsel that the failure of the Government to call certain witnesses may give rise to the inference that the witness, if called, would have testified unfavorably to the Government. I charge you that no such inference can be drawn by you, where both sides had the same opportunity of calling a witness, and the witness or witnesses were available to both sides. There is no presumption against the Government for its failure to call witnesses, when you are satisfied that the testimony would be merely cumulative or repetitious, and no greater value than that of the witnesses who have testified.

You are also instructed that the question of possible punishment of a defendant, in the event there is a conviction, is of no concern of the jury and should not in any

sense enter into or influence your judgment. The duty of imposing sentence rests exclusively on the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of each defendant solely on the basis of the evidence. Under your oath as jurors, you cannot allow a consideration of punishment which may be inflicted upon a defendant if he is convicted to influence (1644) your verdict in any way.

Now a word about the burden of proof, and this is most important. A defendant is presumed to be innocent. The fact that he has been accused of a crime by a grand jury does not destroy that presumption. The burden of proof, in the sense of the responsibility of persuading you ladies and gentlemen of the jury, rests upon the prosecution. The quantum or measure of that proof necessary before you can lawfully find the defendant guilty is referred to as proof beyond a reasonable doubt.

By "reasonable doubt" I do not mean a possible uncertainty. Proof beyond a conceivable doubt cannot be attained in a world of actuality. Neither is reasonable doubt any decision, arbitrarily reached by a juror because of reluctance to perform an unpleasant task. Nor is it disbelief based upon the natural sympathy that we all have for others. A reasonable doubt most nearly signifies one which an average person of ordinary prudence has after carefully weighing all the evidence. By weighing, I do not mean balancing according to the weight of testimony or number of witnesses or exhibits, but rather a determination based upon (1645) a convincing force of the witness' testimony. You must be governed by the quality and not the quantity of the proof.

If the prosecution has sustained its burden on the issues of fact which I have already explained to you, you may lawfully find the defendants guilty. Otherwise, you cannot. If you find that the evidence respecting a defendant is as consistent with innocence as with guilt, the defendant should be acquitted.

If you find the law has not been violated, you should not hesitate for any reason to render a verdict of acquittal. If, on the other hand, you find that the law has been violated, as charged, you should not hesitate because of sympathy or because of some other reason to render a verdict of guilty, as a clear warning to all that crime, as charged here, may not be committed with impugnity.

I am sure you know that your verdict must be unanimous as to each defendant, under each count. Of course, each juror is entitled to his or her own opinion on the facts. Yet it does not follow that such opinions shall not be changed by conference in the jury room. The object of the jury system is to secure unanimity by a comparison of views of (1646) the jurors. So each juror should listen with an open mind to the opinions and arguments of the other jurors.

You know, of course, I am sure, that you may have at your request any or all of the exhibits.

Are there any exceptions, gentlemen?

Mr. Steinberg: If your Honor please——

The Court: Just say yes or no, please.

Mr. Steinberg: Yes.

The Court: All right, under our rules we have to do this out of the jury presence, so will you please excuse us.

(The following took place in Judge Murphy's robing room:)

Mr. Steinberg: First I would like to say on the record that I think the charge was extremely fair, and we thank you for it.

The Court: All right.

Mr. Steinberg: There are only a few things I would like to point out to your Honor.

Under C, the request on behalf of all of the defendants, your Honor did not charge that if the jury find that Anthony Stracuzza has testified falsely to any material fact, they may disregard his testimony (1647) in its entirety.

The Court: Didn't I charge that with regard to any witness?

Mr. Steinberg: No, sir; I don't think so.

The Court: I will not mention it by name.

Mr. Steinberg: We should have added "wilfully," if your Honor please. We left that out.

The Court: Yes, I thought I did.

Mr. Steinberg: Then, specifically, I except, just to sharpen the issue of law that I think exists, to your Honor's failure to charge 7 and 8 in that category. Do you want to look at those?

Mr. Coleman: I don't think 7. I think 7 has been eliminated, but 8.

The Court: 7 was eliminated on the original.

Mr. Steinberg: Yes, 8.

The Court: Yes, you may have an exception as to that. That is on the question of value.

Mr. Steinberg: Yes, because your Honor is taking that view, and we just want to save our exceptions.

Otherwise, I thank you for a very fair and impartial charge, your Honor.

(1648) Mr. Coleman: Those exceptions were for all defendants.

The Court: The exceptions that Mr. Steinberg made are for all of the defendants. They run to the benefit of all defendants.

Mr. Katz: Will your Honor be back in your office after the jury retires?

The Court: Yes, I have another case coming right on, but I will be right here.

Mr. Katz: I wanted to take a matter up with the Court.

The Court: Yes, I will be right here.

(The following took place in the courtroom in the presence of the jury:)

The Court: I was reminded, ladies and gentlemen, that I didn't tell you that when you analyze any witness' testimony, if you find that that witness testified wilfully and falsely to a material fact, you have the right to disregard his entire testimony. You can accept and reject any part you want, or reject it completely.

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(1651) (At 2:20 P. M. the following took place in the courtroom:)

(Jury in box.)

(Roll call of jurors.)

The Clerk: Ladies and gentlemen of the jury, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: And how do you find?

The Foreman: We find the defendant Max Schaffer guilty as charged. We find the defendant Norman Schaffer guilty as charged. The defendant Benjamin Marco guilty as charged. The defendant Hyman Karp guilty as charged.

The Clerk: Ladies and gentlemen of the jury, please listen to your verdict as it stands recorded: You say you find the defendant Norman (1652) Schaffer guilty, Max Schaffer guilty, Hyman Karp guilty, Benjamin T. Marco guilty, as charged, and so say you all?

(Jury nodded assent.)

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Mr. Steinberg: If your Honor please, we would like to renew our motion for an acquittal at the present time, and also for a new trial on behalf of all defendants.

(1653) The Court: For a new trial based upon the same reasonings?

Mr. Steinberg: Yes, sir.

The Court: Well, I want a little time to think about that. So what I will do is to postpone the date of sentence for some reasonable time.

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(1660) The Court: The first order of business is the motions that are pending. I understand there are two motions.

Mr. Moran: Two motions. As I understand, a motion to set aside the verdict, or, in the alternative, to grant a new trial made on behalf of the Schaffers, Marco and Karp.

The Court: I have read the briefs on that, gentlemen, and I must say that it is not free from doubt. I am going to deny the motions and give an exception to each defendant.

Now, is everybody ready for sentence?

Mr. Moran: Yes.

The Court: Do you want to be heard?

Mr. Moran: Yes. As your Honor knows, the defendants Max Schaffer and Norman Schaffer, Benjamin T. Marco and Hyman Karp were convicted by a return of the jury's verdict on the indictment, and the defendants Anthony and Mario Stracuzza are here for sentence on three indictments, 145-232, 145-233, and 145-234.

First of all, a word as to the defendants Mario and Anthony Stracuzza. As your Honor will recall from the testimony at the trial of the defendants Schaffer, (1661) Marco and Karp, the defendant Anthony Stracuzza testified as a witness for the Government. He also testified as a witness for the Government in the trial held in December, 1947. There certain defendants named in indictment 145-234 were brought to trial. Mario Stracuzza also testified as a witness for the Government in that case. Both Anthony and Mario Stracuzza have cooperated with the Government since 1953, shortly after their arrest. It is the Government's representation to the Court that they have materially aided the Government in the prosecution of this case and the case in 1957 involving the truck drivers.

Of course, your Honor has a full pre-sentence report concerning the activities of both of these defendants, and I am sure that pre-sentence report will indicate that both the Stracuzzas during the time covered in these indictments received merchandise in the aggregate of well in excess of a hundred thousand dollars. To what extent they profited is hard to estimate, except for the fact that they have told us that they sold the merchandise at varying amounts from 55 to 70 per cent of the wholesale price, having paid anywhere from 33⅓ per cent to 45 per cent of the (1662) wholesale price to the truck drivers.

As far as the defendants Max and Norman Schaffer——

The Court: You are now going to another subject. I am a little confused. The probation report says that Mario pleaded on 11-25-57 in Special Sessions to a charge of petit larceny, pleaded guilty, and scheduled or was scheduled to be sentenced on January 27, 1958. What happened to that?

Mr. Moran: That is the sentence, I believe, which was originally scheduled to be imposed under 145-234, the indictment involving the truck drivers.

The Court: This is a New York City charge.

Mr. Moran: New York City.

The Court: The Court of Special Sessions. In November he took a plea and was to be sentenced in January of this year.

Mr. Wilkes: You are quite correct. It is a matter separate from this one. His sentence is presently scheduled before Judge Schweitzer to take place on June 11th.

The Court: Did they indict him for some crime?

Mr. Wilkes: He originally had been indicted there for grand larceny in the second degree, which was (1663) reduced to petit larceny, and that is why the sentence is before Judge Schweitzer still.

The Court: That has been carried over for a year or so?

Mr. Wilkes: It has been adjourned and now the sentence is to take place on June 11th.

The Court: Were they waiting there for this case to terminate?

Mr. Wilkes: That is correct.

The Court: I take it that crime related to a period of time that he was cooperating with the FBI in this case?

Mr. Wilkes: During the period of the cooperation. That is right. After the acts which are the subject matter of the indictment before you. They made a raid on a house over in Brooklyn in June of 1957, his brother's home, not the brother who is a co-defendant here this morning.

The Court: All right.

Mr. Moran: As far as the defendants Max and Norman Schaffer are concerned, your Honor, the Government's proof at the trial, if you will recall, indicated that Schaffer's Women's Apparel Shop in Lebanon, Pennsylvania, received approximately $19,000 (1664) of stolen merchandise during the period of time that the Schaffers were dealing with the Stracuzzas under the alias A. Schafler.

The Court: I am familiar with that.

Mr. Moran: The only other thing that I would point out to your Honor is the fact that in addition to their dealings with the Stracuzzas and Berk and Eisenberg, the Schaffers also did business with Jerry Newman, who was also convicted here in the Southern District of New York for running an operation similar.

The Court: That is in the probation report.

Mr. Moran: And also back in 1951 they purchased approximately $44,000 worth of stolen merchandise from a group of individuals who were convicted in General Sessions here in New York City.

As far as the defendant Benjamin T. Marco is concerned, he likewise had business dealings with Jerry New-

man at a point subsequent to the transactions that he had with the Stracuzzas. Newman, of course, was convicted here, as I say, in the Southern District Court for running an operation similar to the Stracuzzas. And the defendant Hyman Karp, likewise, had business dealings with Jerry Newman, in addition to his dealings (1665) with Berk and Eisenberg.

All told, as far as we are able to gather from the investigation made by the FBI, the stolen merchandise in the aggregate involving these defendants and other customers of the Stracuzzas was somewhere in the approximation of $250 during the entire period of 1952 and 1953. That is all I have to say to the Court at this time.

The Court: Did you know that one of the defendants, Marco, was convicted in this court?

Mr. Moran: That would be in the probation report.

The Court: All right, I will hear from the defendants.

• • •

(1670) The Court: Does any other gentlemen wish to be heard?

Mr. Coleman: Your Honor, in respect to Norman and Max Schaffer I know that you have a full probation report. I will say that I have had character witnesses write letters to your Honor's attention.

(1671) The Court: I received a large number of letters on behalf of both of these men and the other defendants, except the Stracuzzas, and I received personal visits to the office and telephone calls. Everybody has taken the same position you are now saying, that they have many friends who speak high of them.

Mr. Coleman: Outside of the family record, which is in the report, Norman's service record is excellent. I believe your Honor has full and complete information.

The Court: I really don't understand Norman Schaffer, a man with a good education and in the service——

Mr. Coleman: May I say, your Honor, the jury's verdict speaks for itself. I would have this comment to say in answer to your Honor, that I do not believe that this court of justice or any court of justice will ever hear again from Norman Schaffer and Max Schaffer. I feel certain and confident of that.

The Court: Well, gentlemen, I think it is a very serious crime.

Mr. Moran: Your Honor, I would ask you to inquire of each of the defendants if they have anything (1672) to say in their own behalf before you impose sentence.

The Court: Why? Is that some standard form?

Mr. Moran: As I understand the rules, your Honor, it is mandatory and there have been cases on the point.

The Court: Well, addressing myself to all of the defendants, have any of you anything to say?

(The defendants responded in the negative.)

The Court: Well, the judgment of the Court is that the defendants Schaffer and Karp be sentenced on the one count that they were convicted on to a term of two years and each fined $10,000. The defendant Marco is sentenced to a term of four years and fined $10,000. The defendants Stracuzza on indictments 145-232, 145-233 and 145-234 are sentenced each to a term of five years to run concurrently and the execution of those sentences are suspended and they are each placed on probation for five years.

Now, if you make an application for bail I will grant it to the defendants.

Mr. Moran: I would suggest that bail be in the same amount as to all defendants.

The Court: Can't they have the bondsman rewrite the bonds to cover the appeal?

(1673) Mr. Moran: It is a question of the amount. We would request that bail be increased to $10,000 for all of the defendants so that they all stand under the same bail.

The Court: Is there a difference between them?

Mr. Moran: I think as far as I can remember, your Honor, Marco is under a $10,000 bond and the others are under a $5,000 bond.

The Court: I won't increase the bail. They have all shown up here. But there should be an application. Would you speak on behalf of all, Mr. Steinberg?

Mr. Steinberg: May I ask one question before I do that. You recited a series of sentences and you suspended as to some. Your only suspensions were with regard to the Stracuzzas?

The Court: Yes. There are jail terms for the others.

Mr. Steinberg: Has your Honor fixed ideas on that?

The Court: The two Schaffers, Marco and Karp are placed in the custody of the Attorney General for the periods of time I have indicated. I said I will grant bail if you make the application.

(1674) Mr. Steinberg: We do apply for bail in the same amount as heretofore for these defendants.

The Court: Motion granted.

* * *

[fol. 265]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C. 145-232

C. 145-233

UNITED STATES OF AMERICA,

vs.

ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA, MAX SCHAFFER, NORMAN SCHAFFER, HYMAN KARP and BENJAMIN T. MARCO, Defendants.

Transcript of Hearing—April 21, 1958

Before: Hon. Thomas F. Murphy, D.J., and a jury.

New York, April 21, 1958;
10:30 o'clock a. m.

APPEARANCES:

Paul W. Williams, Esq., United States Attorney, for the Government; By John T. Moran, Jr. Esq., Assistant United States Attorney.

Irving W. Coleman, Esq., Attorney for Defendants Max Schaffer and Norman Schaffer.

Harris Steinberg, Esq., Attorney for Hyman Karp.

Jerome Katz, Esq., and Paul Rutheiser, Esq., Attorneys for Defendant Benjamin T. Marco.

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[fol. 329] ANTHONY STRACUZZA, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Moran:

Q. Where do you reside, Mr. Stracuzza?
A. I reside at 638 Straight Path, West Babylon, Long Island.
Q. How long have you lived there?
A. Seven years.
Q. Do you own a home?
A. Yes, I do.
Q. How long have you owned that home?
A. Seven years.
Q. How old are you?
A. Thirty-eight.
Q. Are you married?
A. Yes.
Q. Do you have any children?
A. One child.
Q. Is it a boy or a girl?
A. A boy.
Q. How old is he?
A. Thirteen.
Q. Are you employed at the present time?
[fol. 330] A. Well, no. Right now I am laid off.
Q. What was your employment before the time that you were laid off?
A. Working at Locar Trucking, in Hicksville.
Q. That is in Hicksville, Long Island?
A. That is correct.
Q. How long were you employed by them?
A. One year.
Q. When were you laid off?
A. Around March 10th of 1958.
Q. For what reason?
A. They closed up; they went out of business.
Q. Have you ever been convicted of a crime?

A. Yes, in September of 1956.
Q. In what court?
A. In this Federal court here.
Q. What was the offense for which you were convicted?
A. For interstate theft.
Q. Were you convicted on any other charge after that?
A. Yes, in November of 1953, of conspiracy of merchandise moving in interstate theft.
Q. Was it a conspiracy to steal merchandise moving in [fol. 331] interstate theft?
A. Yes, it was.
Q. Have you been sentenced for that offense?
A. No, I haven't.
Q. You are also named as a defendant in the two indictments with these defendants on trial, are you not?
A. Yes, I am.
Q. Have you been convicted on those two indictments?
A. No, I am not.

Mr. Steinberg: I am sorry. I didn't hear that.
The Court: He said, "No, I am not."

Q. Did you plead guilty to both of those indictments?
A. Yes, I did.
Q. Have you been sentenced on those two indictments?
A. No, I haven't.
Q. You are awaiting sentence; is that correct?
A. Yes, I am.
Q. Now, in this conviction that you had in November of 1957, were any promises made to you by any member of [fol. 332] the FBI or any member of the Government to induce you to make your plea of guilty?

Mr. Steinberg: I object to that, if your Honor please.
The Court: On what ground?
Mr. Steinberg: This is probably matter for cross-examination.
The Court: I will allow it.
Mr. Steinberg: Exception.
The Witness: Excuse me. What was that again?
Mr. Moran: Will you read the question back?
The Court: Were you given any promise by any mem-

ber of the Government at the time you pleaded guilty in September of '56?

The Witness: No. I haven't.

The Court: The question is were you?

The Witness: I was not.

The Court: Thank you.

Q. Were any promises given to you in relation to your plea of guilty to the two indictments now before this Court and jury?

A. No, there wasn't any.

[fol. 333] Q. What is your wife's name?

A. Dorothy Lillian Stracuzza.

Q. And what is her maiden name?

A. Maiden name? Dorothy Shaffler.

Q. Will you spell that?

A. S-c-h-a-f—S-c-h-a-e-f-l-e-r, S-c-h-a-e-f-l-e-r.

Q. And was she named as a defendant in the two indictments, along with these defendants now on trial?

A. Yes, she is.

Q. Do you have a brother?

A. Yes, Mario Stracuzza.

Q. And was he also named as a defendant in these two indictments?

A. Yes, he was.

Q. And did he plead guilty?

A. Yes, he did.

Q. Has he been sentenced?

A. No, he hasn't.

Q. That also pertains to the indictment that you pleaded guilty to in November of 1957; is that correct?

A. Yes, it is.

Q. He has not been sentenced on that?

A. No, he hasn't.

[fol. 334] Q. Has your wife been brought to trial on these two indictments, or the one in November 1957?

A. Yes, she has.

Q. She has been brought to trial?

A. In '57? Of conspiracy?

Q. Was she brought to trial?

A. No, she hasn't, no.

Q. She has not been convicted; is that correct?
A. No, she hasn't.
Q. Do you know the defendant Max Schaffer?
A. Yes, I do.
Q. Can you tell us whether he is in the courtroom today?
A. Yes, that is that gentleman.
Q. Would you point him out?
A. Right in the corner there.
Q. Will you tell us what he is wearing?
A. I believe it is a blue suit.

Mr. Moran: May the record indicate that the witness has identified the defendant Max Schaffer.

Q. Do you know the defendant Norman Schaffer?
A. Yes, I do.
Q. Can you tell us if you see him in the courtroom?
[fol. 335] A. That is the gentleman next to Max Schaffer, with the dark blue suit.

Mr. Moran: May the record indicate that the witness has identified defendant Norman Schaffer.

Q. Do you know Hyman Karp?
A. Yes, I do.
Q. Do you see him in the courtroom today?
A. It is the gentleman right next to you.
Q. Now, can you tell us when for the first time you met the defendants Max and Norman Schaffer?
A. The first time was in 1952, on 33rd Street and Seventh Avenue, in an office building that Sol Eisenberg and Hymie Berk operated.

Mr. Coleman: That is objected to, if your Honor please.
The Court: The question or the answer?
Mr. Coleman: Yes, and ask that the answer be stricken out.
The Court: Well, the objection to the question is too late. Do you move to strike out the answer?
Mr. Coleman: I move to strike the answer out.
The Court: I will deny it.
[fol. 336] Mr. Coleman: Exception.

Q. Now, when for the first time did you meet defendant Hyman Karp?

Mr. Steinberg: Just a second. I object to that question, if your Honor please.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. When was the first time I met Hyman Karp?

Q. Right.

A. It was also on 33rd Street, in the office building that Sol Eisenberg and Hymie Berk operated, on 33rd Street.

Mr. Steinberg: Now, if your Honor please, he asked for when, and he got other material in the answer, and I ask that that be stricken.

The Court: Granted.

Q. Just answer the question if you can. When did you meet him, what period of the year?

A. In 1952, in April of 1952.

Q. Now, where did you meet the defendant?

Mr. Steinberg: Just a moment. I object to that as not within the scope of the indictment, because the indictment alleges later than that, if your Honor please.

[fol. 337] The Court: I will allow it.

Mr. Steinberg: Exception.

Q. Where did you meet the defendant Hyman Karp?

A. On 33rd Street, in an office building that Sol Eisenberg and Hyman Berk operated.

Q. Do you know the address?

A. I believe it was 53. I am not positive of it.

Q. 53 what?

A. West 33rd Street.

Q. Can you tell us when for the first time you met the defendant Benjamin T. Marco?

A. It was also on 33rd Street, in the office building that Sol Eisenberg and Hymie Berk operated in 1952.

Mr. Katz: Your Honor, we also wish to object to the question and ask that the answer be stricken from the record.

The Court: On the ground that it precedes the date in the indictment?

Mr. Katz: Yes, your Honor.

The Court: I will overrule it.

Q. What period of time was this that you met Marco? [fol. 338] A. It was around April of 1952.

Q. And do you see the defendant Benjamin T. Marco in the courtroom today?

A. Yes, that is this gentleman sitting right behind the desk, with the glasses on, dark suit,

Mr. Moran: May the record indicate that the witness has identified the defendant Benjamin T. Marco.

Q. Now, can you tell us the nature of your employment in April of 1952?

A. Well, I worked with Sol, Sol Eisenberg and Hymie Berk in changing tickets on dresses and delivering merchandise to their various customers in the garment area.

Mr. Steinberg: What was that first word, if your Honor please? Changing tickets on dresses?

The Witness: Yes, changing tickets on dresses.

Q. Can you be a little more specific as to what you did with the merchandise?

A. Well, would be packages coming up from the various drivers.

Mr. Steinberg: May I take a blanket objection to this entire line of testimony, if your Honor please, on behalf [fol. 339] of all defendants?

The Court: Yes.

A. (Continuing) I would have—these drivers and these fellows that dealt with Hymie Berk and Sol Eisenberg, would bring up merchandise and packages or loose dresses. If there were loose dresses, I would change the tags on them, put a different tag. I would put a style to identify the price, like if a dress was twelve seventy-five wholesale, I would put on the ticket "1275" and the size on the bottom, like if it was a size 14 or 12.

Q. Now, these dresses, were they in cartons or did they come in racks?

A. No, these were in cartons.

Q. What did you do with the merchandise, with the dresses, after you finished with them?

A. Well, I would deliver to his various customers in the garment area. If it was children's wear, well, then, I knew that was—the only customer I knew was Mr. Karp, of Fall River, Massachusetts. I would just put it in another box and reseal it and get it ready for the Railway Express.

Q. And did you deliver the merchandise to the Railway Express, or did they come and pick it up?

[fol. 340] A. Yes, they would come right to the building, around 4:30 and 5 o'clock.

Q. Now, how long were you with Berk and Eisenberg in this office on West 33rd Street?

A. Well, I was with them from April to about June of 1952.

Q. And what happened then?

A. Well, then they moved up to 110 West 40th Street, and I took charge of the office at 110—I mean, excuse me, at 33rd Street address, which they left.

Q. Now, during this period of time that Berk and Eisenberg were at the office on West 33rd Street, did there come a time when Max and Norman Schaffer came to the office?

A. Yes.

Q. Would you tell us what they did there, if anything?

Mr. Goldman: Objection, unless the time is fixed, your Honor.

The Court: Yes, you should fix the time, and I think you should fix each one separately, counsel.

Mr. Moran: All right.

Q. Can you tell us if during the period of April or May [fol. 341] of 1952 you saw Max Schaffer in the office of Berk and Eisenberg on West 33rd Street?

A. Yes, I saw him in the early part of April of 1952.

Q. You are talking about Max Schaffer now?

A. Max Schaffer, yes.

Q. And was merchandise shown to him at that time?

A. Yes. There is merchandise displayed on the rack,

or if there is any in the boxes, laying on the floor, he could see for himself.

Q. Did you or someone else show copies of invoices to him?

A. Well, that would be Sol Eisenberg's business.

Mr. Coleman: I object and ask that that be stricken out, your Honor.

The Court: Granted.

Q. Did you see him do it, is my question?

A. Yes, I did.

The Court: What did you see?

The Witness: Well, I would see Sol Eisenberg showing him the various merchandise that he has displayed in the office, and he can look to see if he wants it or not.

[fol. 342] Mr. Steinberg: If your Honor please—

The Court: I think the question was entirely different. The question was, did you see him show something else, other than the merchandise?

The Witness: Well, there would be invoices displayed, representing the packages that are there, or otherwise these dresses that we changed the tickets on, that we had from these packages that came from these various drivers, if I changed the tickets I would have them on the rack, rechanged, but we always kept some invoice in the office, Judge.

Mr. Steinberg: If your Honor please—

The Court: Yes.

Mr. Steinberg: I just want to note my objection to this, insofar as defendant Karp is concerned. I gather this is supposed to be conversation or some demonstration with Max Schaffer.

The Court: I don't think there is anything said about a conversation.

Mr. Steinberg: Or something shown to him, at any rate.

The Court: You object on the part of Mr. Karp?

Mr. Steinberg: No, I would like to have your Honor [fol. 343] rule that this is not admissible against Karp. This is a conversation—this is a demonstration to Max Schaffer.

The Court: He hasn't said a word about Mr. Karp.

Mr. Steinberg: I ask your Honor to instruct the jury that it has no relevancy to Karp.

The Court: Yes, at this moment it has no relevance; that is correct.

By the Court:

Q. But the question still remains as to whether or not you saw Mr. Eisenberg show something other than dresses to Mr. Schaffer?

A. Yes, yes, we have some of these invoices from these merchandise that came up from these various drivers, describing the contents of the merchandise that are displayed in the office.

Q. And you saw Mr. Eisenberg show such documents?

A. Yes, I did.

Q. To Mr. Schaffer?

A. Yes.

Q. Which Mr. Schaffer?

A. It would be Norman or Max Schaffer together there.

[fol. 344] Mr. Coleman: I object, your Honor. I didn't understand from the line of questioning that he was referring at this point to Mr. Norman Schaffer at all. I think the question that Mr. Moran was asking was first, when Mr. Max Schaffer came there, and that is when I asked that a time be fixed, and your Honor also said, "And who?" if I recall.

The Court: Yes, and the witness now said both.

Is that correct?

The Witness: Yes, they were both there.

By Mr. Moran:

Q. You are referring to the period of time of April or May 1952; is that correct?

Mr. Steinberg: He said early in April; he said early in April.

Mr. Moran: All right.

Q. Now, can you fix any other time or the number of occasions in which you saw either Max Schaffer or Norman

Schaffer in the office of Berk and Eisenberg on West 33rd Street?

A. Yes, they would come in about every ten, ten days, to every week in the office. I saw them a couple of times.

[fol. 345] Q. And did you on those occasions see any documents being shown to them by Eisenberg or Berk, or someone else?

Mr. Coleman: Now, your Honor, I object to that as being leading.

The Court: It is. Sustained.

Q. Well, tell us what, if anything, you saw happen in the office during that time?

A. Well—

Q. Relating to the two defendants, Max Schaffer and Norman Schaffer?

A. Yes. These drivers would bring up merchandise. I would have them changed, and these defendants, these gentlemens, Max and Norman Schaffer, wouldn't even be in the office yet. I would have these tickets changed, because I come in eight o'clock in the morning, and I would have these papers from the boxes prepared for Eisenberg, so he can do and sell to whom he wants to.

Mr. Coleman: I object to that and ask that it be stricken out. The question was in connection with their coming out, and he is answering but not responsively to the things that he would do in their absence.

[fol. 346] The Court: Sustained.

Q. I am asking you again to tell us anything that you observed in connection with the two defendants, not something that you did in their absence?

A. Well, the only thing I can observe is Sol Eisenberg showing them the dresses, if there's any coats and suits, and the invoice representing this merchandise that is displayed in the showroom.

Q. Now, did you see him do this on each and every occasion that they appeared in the office on West 33rd Street, in April and May of 1952?

A. Yes, I have seen him most of the occasions.

Q. Now, during that same period of time, April and May of 1952—

Mr. Steinberg: Just a minute. I object to the form of the question. He has testified to early in April, and now counsel is saying, "during the same period of time, April and May."

The Court: Sustained.

Q. During the early part of April and during the rest of April and May, did you see the defendant Hyman Karp on any occasion in the office of Berk and Eisenberg?

Mr. Steinberg: Object to the form of the question as [fol. 347] leading.

The Court: Sustained.

A. Yes, I have seen—

Mr. Steinberg: Just a minute. His Honor sustained the objection.

Q. All right, I will ask you, did you see Hyman Karp in the office of Berk and Eisenberg?

A. Yes, I did.

Mr. Steinberg: May a time be fixed, if your Honor please?

The Court: He has to do one thing at a time.

Now ask him the time.

Q. Did you see him there in—

The Court: No, ask him the time.

Q. Can you tell us the time that you saw him?

A. Yes, in about the third week of April he was, the same time I saw Max and Norman Schaffer was there, the same time when he was there. He was sitting down—I remember him sitting down, and they were looking at the coats and suits.

Q. Did you observe anything—what did you observe concerning Karp and anyone else in your office?

A. Well, I didn't know children wear on the day itself, [fol. 348] when Karp was there. I guess he was just there to speak to Sol Eisenberg and Berk. But I observed Norman and Max talking to Sol Eisenberg and looking at these invoices representing the merchandise in the office that are there then.

Q. Are you talking about the day when the Schaffers and Karp were in the office at the same time?

A. Yes.

Mr. Steinberg: Just a minute. I object to this, if your Honor please. He asked him about what he observed Karp do. He told us he was up there to look around. Now, then, he went off on a long harangue about the Schaffers, and now counsel continues that.

The Court: I will allow it.

Mr. Steinberg: Exception.

The Court: Your answer is "yes"? Did you say "yes"?

The Witness: Excuse me. I would like to have that—

Mr. Moran: May the question be read back?

(Question read.)

The Court: Is that the time you were talking about?

[fol. 349] The Witness: Yes, when I remember—

Mr. Steinberg: The answer is "yes," if your Honor please.

The Witness: (Continuing)—these three gentlemen—

Mr. Steinberg: Just a minute. I object to anything other than the answer to the question.

The Court: You have answered it. Thank you.

The Witness: (Continuing) Yes, they were in the office at the same time.

The Court: Thank you.

Q. Did there come a time after this that you saw Karp in the office of Berk and Eisenberg?

A. Well, I remember him on one other occasion. That was about the—about the last week, I believe, of May of 1952.

Q. And can you tell us what, if anything, you observed on that occasion?

A. Well, we had some children's wear already packed, I had packed in a box, going to Fall River, Massachusetts, and he was talking with Sol Eisenberg. I don't know what was their conversation, but I believe Berk showed him the [fol. 350] invoices describing this merchandise that are being shipped to him.

Q. Now, was that the last occasion that you saw Karp on 33rd Street?

A. Yes, that is the last one.

Q. Was there a time that you saw Benjamin T. Marco in the office of Berk and Eisenberg?

A. Yes, I saw him once.

Q. Can you fix a time for us?

A. Well, say, about the third week of April of 1952.

Q. And can you tell us what you observed, if anything, at that time?

A. Well, he picked out merchandise that was displayed there, and Sol Eisenberg showed him certain invoices describing this merchandise. I don't know what conversation they had among them, but I packed this merchandise and got it ready for the Railway Express Agency, going to Marco, to Bluefield, West Virginia.

Q. And can you tell us how this merchandise came into the office?

A. Well, he would have these various drivers and these men, I don't know whom they are, that brought loose merchandise, fifty, a hundred at a clip. I don't know where [fol. 351] they got them, but I recognized just packages, because I used to handle them myself.

Mr. Steinberg: If your Honor please, I ask that all this testimony of how it got there, not in the presence of the defendants be stricken.

The Court: I will allow it.

Mr. Steinberg: Exception.

Q. Now, did you meet any other customers, or were there other customers of Berk and Eisenberg?

A. Yes.

Q. On 33rd Street?

Mr. Steinberg: I will wait until he finishes.

Q. On 33rd Street?

A. Yes.

Mr. Steinberg: I object to questions about other customers, if your Honor please.

The Court: Well, the answer is "yes." It hasn't developed.

Mr. Steinberg: Would your Honor be good enough to caution the witness to give counsel a chance to object? Because once he answers, and your Honor has ruled it has been answered, I have a very difficult time making an objection, when he puts his answer right on top of a ques-
[fol. 352] tion without a chance to object.

The Court: Yes, if you see any of the lawyers rising to object, you withhold your answer until I pass on it.

The Witness: Yes.

Excuse me. What was that? May I have the question reread?

The Court: The question was whether you saw other customers. You said, "Yes."

The Witness: Yes. There—

The Court: No, that answers the question.

Q. Now, can you tell us his or her name, or their names?

Mr. Steinberg: Just a minute. I object to other customers, if your Honor please. I don't see the relevancy or necessity of it.

The Court: Are you going to tie the other customers in, in some way?

Mr. Moran: Yes, I am, your Honor.

Mr. Steinberg: That certainly doesn't seem to be ground for introducing evidence, the fact that he says he is going to tie it in. I object to it at this time.

The Court: The man is an officer of the court, and if
[fol. 353] he represents to me that he is going to tie it in in some way to the case, I will take it.

Mr. Steinberg: Will you take it subject to connection and subject to being stricken out if it is not tied in?

The Court: Of course, yes.

Who are these customers?

Is that the question?

Mr. Moran: Yes, it is, your Honor.

A. Yes, there was a Fred Kusnick, of Patty Ann Frocks, of 41st Street and Seventh Avenue, and also a Beatrice

Goldman, of a Mollie Zeitschner, of Washington, D. C., that came up there every week.

Q. Now, can you tell us what, if anything, you observed on the occasion or occasions when either of those persons came up?

A. Well, they would look at the merchandise, also, and he would show them the price of these merchandise from the invoices he had displayed, and if they wanted it, I would prepare it and ship it for them to these customers that ordered them.

Q. Now, I believe you have testified that Berk and Eisenberg were there two months, April and May of 1952?

[fol. 354] A. Yes.

Q. And that you remained in the office on West 33rd Street sometime thereafter; is that correct?

A. That's right.

Q. Can you tell us how long after Berk and Eisenberg left you remained on 33rd Street?

A. I remained there—they left—from June to, to the end of August.

Q. What year?

A. Of 1952. They moved to 110 West 40th Street.

Q. Were you associated with them in any way while they were on 110 West 40th Street?

A. Yes. I would—these drivers, he wouldn't want them to this new place that he moved to on 110 West 40th Street.

Mr. Steinberg: Who is "he," if your Honor please?

A. (Continuing) Sol Eisenberg wouldn't want these drivers to come up to 110 West 40th Street. So he told me I should take charge of the office, anything that came in I should get it and prepare it for them, change the tickets on the dresses; if anything came in children's wear, he don't want it up there, because he doesn't have no customers that came up to 110 West 40th Street for children's [fol. 355] wear. So he says just leave it in a box. If it's a clean box, just retape it; if it's an old box, put in a new box and give the Railway Express.

Mr. Steinberg: If your Honor please, I ask that this entire conversation with Mr. Eisenberg be stricken out.

The Court: I don't recall him testifying to a conversation.

Mr. Steinberg: He is just talking about relations between him and Eisenberg, and conduct and method of operations described by Eisenberg, as I understood.

The Court: Yes, but you said it's a conversation.

Mr. Steinberg: Well, this entire answer, I ask that it be stricken out.

The Court: I will allow it.

Mr. Steinberg: Exception.

Q. Now getting back to the time that Berk and Eisenberg were on 33rd Street with you, that is, April and May of 1952, did they pay you a salary, or what compensation did you receive?

A. They gave me $35 a week.

[fol. 356] Q. That was for April and May of 1952?

A. That is correct.

Q. Now after they moved to 110 West 40th Street in June of 1952 and you continued to operate the office on West 33rd Street until the end of August 1952, did you receive any payment from them?

A. Well, the merchandise—I supposed to get 10 per cent of what these drivers would bring up to me. The valuation of the merchandise they would bring up to me, I was supposed to get 10 per cent from Sol Eisenberg.

Q. Did you make any payments to the drivers for the merchandise?

Mr. Steinberg: Just a minute. I object to all this line of questioning, if your Honor please, as not within the scope of the indictment.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. Did I make any payments to them?

Q. Yes, did you actually pay the drivers?

A. Yes, I did.

Q. What did you pay them?

A. I paid them 45 per cent of the total invoice of the merchandise from these packages.

Q. Did you pay them in cash?

[fol. 357] A. Yes, I did.

Q. Now, you say you got 10 per cent; what did that 10 per cent—

The Court: He said he was supposed to get 10 per cent.

Q. Did you actually get 10 per cent?

A. Well, he was giving me at the beginning in this times. There are times he took it away.

Mr. Coleman: I object. It is not responsive. He can answer that yes or no.

The Court: Yes, did you or did you not get the 10 per cent?

The Witness: Yes, I did.

Q. What did this 10 per cent represent?

A. Well, if a truckman brought a package, say a hundred dollars, and I look at the manufacturer's invoice, and I would give him 45 per cent of it. I would take that same package and reclean it and give it to Sol Eisenberg. He would give me 10 per cent. I would make ten dollars on this here package, the difference between the forty-five per cent and the 55 per cent.

Q. What, if anything, did Berk or Eisenberg get for this?

[fol. 358] A. Well, whatever—

Mr. Steinberg: Just a second. I object to that question.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. Whatever they charge. I wouldn't know. They could charge any amount above 55 per cent. I wouldn't know how much they charge his accounts. He never confided with me on that.

Q. But you got 55 per cent from them; isn't that correct?

A. That is correct.

Q. Of which you had to pay 45 per cent of the invoice price to the driver.

A. That is right.

Q. Can you tell us what, if anything, you did with this merchandise when you received it in the office on West

33rd Street during the period of time that you were there by yourself?

A. Well, I would get the dresses—if I seen dresses or coats, I would put them on hangers, put them on a rack, look at the invoices from these manufacturers, and if a coat, for instance, says "thirty-two seventy-five," I put a [fol. 359] new white ticket on the coat and put "3275" and a size on it. If it's a 12 or 10, I put a 10, and I would do it all the way on. Say if he had twenty-four pieces, I would do it on the twenty-four pieces. I would take these bills, call up Sol Eisenberg and tell him I am coming.

Mr. Coleman: I object to a conversation, your Honor, that he is testifying about with Sol Eisenberg. The defendants were not present.

The Court: That is true, Counsellor.

Mr. Moran: All right.

Q. Just tell us what you did, not any conversation that you had.

A. Well, I would change the tickets on all these dresses, take the manufacturer's tickets off, put a little white ticket on, and like I said, if a dress or a coat has a price range of fourteen seventy-five, I would put on a white ticket, "1475," make a line, put the size under it, and do it with every garment that I had in dresses, coats or suits. If there was any children's wear, I would leave it intact, because he only had one customer that I knew of. That was Hyman Karp, of Fall River, Massachusetts. I would leave that in the office.

Q. You are speaking about children's wear?

[fol. 360] A. Yes.

Q. Now, after you had written up these tags on the merchandise, what did you do, if anything, with the merchandise?

A. Well, I put them in a couple of little salesmen bag that Sol Eisenberg left for me, and I would take a cab and bring it up to his premises at 110 West 40th Street.

Q. That was all the merchandise that you received?

A. Yes.

Q. Did you leave it there?

A. Yes. I would show it to him and—

Mr. Coleman: He has answered that, your Honor. He has answered the question. The question was, "Would you leave it there?" and the answer was "Yes."

The Witness: Yes, I would leave it there.

Q. Did there come a time on any occasion where you would take the merchandise to a shipping or a freight station?

A. Yes. There was times I had stuff—

Mr. Steinberg: If your Honor please, it is very difficult to conduct this trial if he is going to volunteer something. [fol. 361] The answer is "Yes." He should stop and then wait for the next question. I object to anything further.

The Court: Sustained.

Q. Could you tell us when and what occasions you took merchandise to various shipping agencies?

A. I had some coats, I had merchandise, I had coats, dresses and suits, I would have a clean box to put these in, to ship to, say, Schaffers, of Lebanon, Pennsylvania, and I would take a cab with it and take it to U. S. Packing on 38th Street and Eighth Avenue.

Mr. Coleman: First of all, your Honor, I object. Mr. Moran said, "Did there come a time when?" I think we are entitled to know the time he is now speaking of.

The Court: Yes, tell us the time.

Q. When did this occasion or occasions occur?

A. This was when I was with Sol Eisenberg and Hymie Berk on 33rd Street, in April and May of 1952.

Q. Did you do the same thing with this merchandise during the summer of '52?

A. In the summer of—

Mr. Coleman: Your Honor, I object and ask that that be stricken out.

The Court: Sustained.

[fol. 362] A. (Continuing) In the summer of—

The Court: Wait a minute.

Mr. Coleman: Wait a minute, please.

The Court: I will take over, Counsel.

You will ask the question again.

(To the witness.) Just be responsive, if you will.

Q. I think I asked the question, did there come a time after April and May when you took merchandise to various shipping agencies?

Mr. Steinberg: And the answer is yes or no, if your Honor please.

The Court: Now, Counsellor, you just can't be interfering that way.

Mr. Steinberg: I am sorry, sir. I am sorry. Because he has volunteered so much—

The Court: No, there must be a reason that prompts you. You are not allowed to do it. It you have an objection, you will have to rise like a lawyer and make it.

Mr. Steinberg: I respectfully object to his giving anything other than a yes or no answer.

The Court: All right.

Did you do the same thing after April and May?

[fol. 363] The Witness: Well—

The Court: Yes or no?

The Witness: In delivering packages?

The Court: Taking them to some shipping companies for delivery by them?

The Witness: No, after that it was only—

The Court: The answer is no, you did not.

The Witness: No, I didn't.

The Court: Thank you.

Q. Will you tell us what you did after April and May with this merchandise?

Mr. Coleman: Objected to unless he is fixing a time when after April or May?

A. From June—

Q. During the period you were there—

A. —to August.

Q. May I finish my question, please?—during the period you were there, on 33rd Street, by yourself, after Berk and Eisenberg moved to 110 West 40th Street, until the time you left, yourself, in the end of August 1952, and that is the period of time?

A. Yes. Well, all I did then was nothing but in changing these tags on these coats, suits and dresses, and just bring-
[fol. 364] ing them up to Sol Eisenberg, at 110 West 40th Street. That is all I did from June to the end of August.

Q. Now, during the period of time that you were there, on 33rd Street, by yourself, from sometime in June 1952 to the end of August 1952, did there come a time during that period that you were associated with your brother, Mario Stracuzza?

A. Yes. He came in the last two weeks.

Mr. Steinberg: May I object to anything other than "yes," if your Honor please.

The Court: You have answered the question when you said "yes."

Q. What period of time, if any, were you associated with him?

A. In the last two weeks of August.

Q. Can you tell us what he did, if anything?

A. Well—

Mr. Steinberg: Just a minute. I object to the form of the question.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. He gave me a hand to prepare this merchandise to take to Sol Eisenberg, to 110 West 40th Street.

[fol. 365] Q. Now, did there come a time when you closed the office there on West 33rd Street?

A. Yes, there was.

Q. When was that?

A. At the end of August of 1952.

Q. What happened thereafter?

A. Well, Berk told me to open up a different place, so I—

Q. Where?

A. At 1133 Broadway is where I did open up another place.

Q. When did you open?

A. In 1952.

Q. What period of time?
A. September of 1952.
Q. Did you have a bank account?
A. Yes, sir.
Q. For this business?
A. Yes, sir, I did.
Q. Under what name?
A. Charles Santangelo.
Q. At what bank?
A. Federation Bank & Trust Company, on 34th Street and Eighth Avenue.
[fol. 366] Q. Did you use your own name at this new location, 1133 Broadway?
A. No, I didn't.
Q. What name did you use?
A. I used A. Finkel, F-i-n-k-e-l.
Q. Can you describe the office that you had?
A. Well, it was a, say, a 8 x 15 showroom.
Q. Just one room?
A. Yes, just one room.
Q. How long did you remain in this office, this location, 1133 Broadway?
A. I remained from September to March, September of 1952 to March of 1953.
Q. Was there anyone else associated with you in that business under the name of A. Finkel?
A. Yes, a Hymie Berk.
Q. Was your brother Mario Stracuzza associated with you?
A. Yes, he was.
Q. Was Sol Eisenberg associated with you?
A. No, he wasn't.
Q. Now, will you describe how you conducted your business there under the name of A. Finkel, at 1133 Broadway, [fol. 367] from September 1952 until sometime in March 1953?

Mr. Steinberg: I object to that question, if your Honor please, as not within the scope of the indictment.
The Court: I will allow it.
Mr. Steinberg: Exception.
Mr. Coleman: I further object, your Honor, on the

ground that it is too vague. "How did you conduct your business?" That would cover a multitude of things.

The Court: Well, we will listen, and you may have an exception.

A. Well, we had drivers that would come downstairs, would call us, that would meet us downstairs, and my brother had these various drivers in the garment area that he would meet in designated places, or that he would make arrangements with them. He would bring them to me, and in turn I would get these merchandise and put them on a rack, and leave them in the boxes, and Berk would dispose of it the way he would want to.

Q. Well, would you do anything with the merchandise when you received it from the drivers?

A. Yes. They gave it to me; I would pay them, say, for instance a package $300, if I paid him 45 per cent, [fol. 368] I would get 55 per cent off Hymie Berk. I would make a 10 per cent difference.

Q. Would you keep that 10 per cent for yourself?

A. Well, it would be 5 per cent for me and 5 per cent for my brother.

Q. Did you remain in the office, or did you go out in the street?

A. No, I remained most of the time in the office. Occasionally I went downstairs. If my brother called me and told me a certain driver was coming over, I told him I will go down and I will pick it up for him.

Q. What did you do with the merchandise after you had examined it in the office?

A. Well, Berk would prepare most of this. If there was coats, suits and dresses, he would give most of it to Schaffers of Lebanon, Pennsylvania. If it was children's wear, well, I would put them in another box. If the box was damaged, I would put them in a new box. If it was, just, say, not too much writing on it, I would retape it and get it prepared for Hyman Karp, of Fall River, Massachusetts.

Q. Now, during this period of time, from September 1952 until March 1953, did there come a time when either Max Schaffer or Norman Schaffer came to the office at [fol. 369] 1133 Broadway?

A. Yes, there was.

Q. Can you tell us the number of occasions when they came?

A. They would come about every week to every ten days.

Q. Would they come together or individually?

A. Most time together.

Q. Were there times during this period that Max Schaffer would come alone?

A. Yes, there was.

Q. And were there times when Norman Schaffer would come alone?

A. Yes, there was.

Q. Will you tell us what, if anything, they did while they were in the office?

A. Well, they would look at the merchandise that is displayed on hand there, and Berk would show the invoices describing this merchandise. If they wanted it, it would go right out. I would pack it for them and have it ready for U. S. Packing, on 38th Street.

Q. When you say, "the invoices," you mean the manufacturers'?

A. The manufacturers', yes.

[fol. 370] Q. Now, did there come a time during this period from September 1952 until March 1953 when you were operating under the name of A. Finkel, that Hyman Karp came to the office on one or more occasions?

A. Yes, he did.

Q. Can you tell us the number of occasions that Hyman Karp came there?

A. I'd say about three or four times.

Q. Can you tell us what, if anything, he did when he was in the office?

A. Well, at one occasion I remember I had a lot of children's blouses he had seen on the premises itself, and whatever was packed, Berk would show him the invoice representing—from the manufacturers, he can see for himself what he is getting. But all children's wear went to him.

Q. And this happened on each and every occasion that he came?

A. That is correct.

Q. Were you paid a salary, or what compensation did you receive from Berk?

A. I am supposed to get 55 per cent of everything in ladies' wear and 50 per cent of children's wear.

Q. And from this you had to pay the drivers their 45 [fol. 371] per cent?

Mr. Coleman: I object to that as leading, if your Honor please.

The Court: Yes, don't lead the witness, Counsel.

Q. Did you or someone else have any invoices of your own?

Mr. Coleman: I object to the double form of that question, if your Honor please?

The Court: Sustained.

Q. Did you prepare invoices for the shipments of your merchandise?

A. No, Hymie Berk prepared all the invoices at 26th Street and Broadway.

Q. Can you describe these invoices to us?

A. Yes. They had "A. Finkel" written on it, and "1133 Broadway," and our telephone number.

Q. W[illegible]e they typewritten or printed or what?

A. These were printed.

Q. And when he, when Berk prepared the invoices, were they typewritten or handwritten or what?

A. These were—they were handwritten.

Q. You never prepared any invoices; is that correct? [fol. 372] A. No, I did not.

Q. Now, did there come a time while you were on 26th Street that the Schaffers and Karp were there at the same time?

The Court: Excuse me, Counsel. I don't remember 26th Street.

Mr. Moran: Twenty-sixth Street is 1133 Broadway, your Honor.

The Court: All right, that is news to me. All right.

Q. Will you tell us where 1133 Broadway is?

A. 1133 Broadway is 26th Street and Broadway. It is the corner building.

Q. Did there come a time at that address, during the period of time that you were there, that either Max Schaffer or Norman Schaffer came to the office at the same time Hyman Karp was there?

A. Well, I don't remember them being together there, but it is possible they were.

Mr. Coleman: Well, your Honor, he has answered that.

The Court: Thank you. That was just an observation.

Mr. Coleman: I object to part of the conjecture.

[fol. 373] Mr. Steinberg: I object to it, too, if your Honor please.

The Court: Sustained.

Counsel, you can't group defendants together. These men are charged separately with crimes, and you will have the burden of proving the crime against each one separately. Merely because they are related doesn't mean anything.

Q. Do I understand then that the answer you have given relates both to Max Schaffer and to Norman Schaffer?

A. Yes.

Q. That you did not see them with Hyman Karp at any time on 26th Street?

A. No, I didn't.

Q. Now, how did your customers pay for the merchandise that they received?

A. By check.

Q. And how were these checks made out?

A. To A. Finkel, 1133 Broadway.

Q. How did you receive these checks?

A. By mail.

Q. Did you receive them directly?

[fol. 374] A. Well, the Schaffers came directly, and Hyman Karp's went to Hymie Berk's address.

Q. And did you ever see them or receive them?

A. Well, Berk would in turn bring them to me and try to straighten out whatever he owes me.

Q. What did you do with the checks payable to A. Finkel that you received from Schaffers?

A. I would deposit them in the account of Charles Santangelo at the Federation Bank & Trust Company.

Q. Did you endorse the name "A. Finkel" on them?

A. Yes, I did.

Q. And also counterendorsed them under the name of Charles Santangelo?

A. I did.

Mr. Moran: May I have these marked Nos. 1 through 51?

(Marked Government's Exhibits 1 through 51 inclusive, for identification.)

The Court: We will take a short recess.

(Short recess.)

ANTHONY STRACUZZA resumed.

Mr. Moran: May I have the last question and answer read?

[fol. 375] (Question and answer read.)

Direct examination (continued).

By Mr. Moran:

Q. Mr. Stracuzza, I show you Government's Exhibit 1 for identification, to Government's Exhibit 51 for identification, and ask you if you can identify those documents?

A. Yes.

Q. Can you tell us what they are?

A. These are photostatic copy of checks that Hyman Karp had sent to A. Finkel.

Q. Now, I direct your attention, pointing to Government's Exhibit 1 for identification, to the back of that check, and ask you if the first name that appears there is in your handwriting?

A. Yes, it is.

Mr. Steinberg: If your Honor please, let him be good enough to identify the exhibit by exhibit number.

The Court: I think he said Exhibit No. 1.
Mr. Steinberg: I am sorry, sir.

Q. Is that your signature, the first signature that appears in Government Exhibit 1 for identification?
A. Yes, it is.
Q. Now I ask you to look at each of the fifty-one ex-
[fol. 376] hibits, number 1 through 51, and tell us whether the signature, the first signature that appears there, is in your handwriting?
A. Yes.
Q. Now having looked at the entire fifty-one documents, can you tell us whether the first signature that appears on the back of each one of these checks is in your handwriting?
A. Yes, they are.
Q. And that each one of these checks was received from Hyman Karp, payable to A. Finkel; is that correct?
A. That's right.

Mr. Coleman: Would your Honor ask the witness to speak just the least bit louder?
The Court: Could you keep your voice up for each answer?
The Witness: Yes.
Mr. Coleman: Thank you very much.

Q. Now, can you tell us whether you deposited these checks in the name of Charles Santangelo, each and every check?
A. Yes, I did.
Q. Each and every check you deposited?
[fol. 377] A. There is some that I would discount in my wife's bank account, and some I would give to my sister-in-law, Marie, to deposit—have her discount them in a super market.
Q. What do you mean by "discount"?
A. Try to get cash right away, so I could have money on hand to buy more merchandise.
Q. Your wife cash the check for you, in other words?
A. Well, discounted in her bank and draw out cash in

place of that, and some checks I would give to Marie Stracuzza.

Q. That was your sister-in-law?

A. Yes.

Q. And she would cash them for you?

A. Yes, she would cash them in a super market for me.

The Court: Then the answer is, "No, I did not deposit them all in the account of Santangelo"; is that correct?

The Witness: That is correct.

Q. You say that you stayed at 1133 Broadway, 26th and Broadway, until March of 1953; is that correct?

A. That is correct.

[fol. 378] Q. Now, can you tell us your arrangements with Berk concerning all this merchandise?

A. Well, my arrangements with him is, I was supposed to be getting 10 per cent, and I was not getting all the way 10 per cent. There is times like on two occasions, like on Hyman Karp, there is two bill numbers he claimed that Hyman Karp didn't get, totaling maybe around $700 that I got beaten out of. So I didn't say nothing of that until he showed me another one of—in the midtown area, of another customer—I believe it was Excellent Value, the name of this customer—totaling about $480. So I started argue with him, and I told him, "Look, I don't want to do no more business with you. I want to close the place up." And that is what I did.

Q. So there came a time in March 1953 that you did close; is that correct?

A. That's right.

Q. Can you tell us, concerning the merchandise that you sold to Karp, how much—what was the price that he paid?

A. Oh; I was supposed to get 50 per cent. Anything over that, Hymie Berk got more, over 50 per cent.

[fol. 379] Q. And how much did you pay for this merchandise to the drivers?

A. Well, I paid from a third to 45 per cent of the manufacturer's invoice.

Q. Now, did there come a time that you closed the business—you say you closed the business in March of '53;

did there come a time when you moved to another location?

A. Yes, I moved at 48 West 25th Street.

Q. And when did you start there?

A. I started in May of 1953.

Q. And how long did you continue there?

A. Until, until about the 28th of July, of 1953.

Q. And were you associated with anyone at this new place?

A. Just my brother and I.

Q. Mario Stracuzza?

A. That's right.

Q. Did you operate this place of business under your own name?

A. No, I had a name under A. Shaffler.

Q. And did you have invoices covering your merchandise?

A. Yes, I did. I had went to a printing store and bought [fol. 380] the same sheets I did with Finkel, same store that made invoices under A. Shaffler.

Q. And did you have a bank account?

A. Yes, I did.

Q. Under what name?

A. Charles Santangelo.

Q. Was it the same bank account that you used for the other location on 26th Street?

A. Yes, I did.

Q. When you sold any merchandise to any customer, did you send a copy of one of your invoices, under the name of A. Shaffler, to them?

Mr. Steinberg: Object to this blanket question, if your Honor please.

The Court: Sustained.

Q. Did you make any sales of merchandise to the defendant Max Schaffer, under the name of A. Shaffler?

A. Yes, I did.

Q. Did you make any sales of merchandise to the defendant Norman Schaffer under the name of A. Shaffler?

A. Yes, I did.

Q. Did you send to Max Schaffer a copy of your in-

voice under the name of A. Shaffler, for the merchandise that you sold him?

[fol. 381] A. I did.

Q. And did you send to Norman Schaffer—

A. I did.

Q. —copies of your invoices under the name of A. Shaffler, for merchandise that you sold to Norman Schaffer?

A. That is correct.

Q. Did you sell merchandise, operating under the name of A. Shaffler, to Hyman Karp?

A. I did.

Mr. Steinberg: May we have a time fixed, if your Honor please?

Just a second.

The Court: The answer is "yes." Now fix the time.

Q. Can you tell us when you first started to sell merchandise to Hyman Karp?

A. In May of 1953.

Q. Can you tell us any particular part of the month that you started?

A. Say, say about the middle of May.

Q. Until what period of time?

A. Until, until, up to about July 28th.

Q. And during this time that you were dealing with [fol. 382] Karp, did you send invoices to him under the name of A. Shaffler?

A. I did.

Q. On each and every occasion?

A. Yes, I did.

Q. And when did you first start to do business with Max Schaffer?

A. In the—

Mr. Coleman: Your Honor, I think it would be repetitious. I think Mr. Moran meant something else, because he just asked that question.

The Court: Didn't you cover that?

Mr. Moran: All right. I don't know that I fixed an exact time.

Mr. Coleman: I thought you had, in May of '53, middle of May.

Mr. Moran: All right.

Q. Can you tell us whether you did any business with Benjamin T. Marco while you were operating under the name of A. Shaffler?

A. Yes, I did.

Q. Can you tell us when you began business with him?

A. I began in June of 1953, as a result of a conversa- [fol. 383] tion I had with a Patty Ann Frocks, on 41st Street and Seventh Avenue. After speaking to Fred Kusnick, of Patty Ann Frocks, I called up Benjamin Marco and I told him, "You remember me?" I said, "I worked for Sol Eisenberg on 33rd Street?"

He said, "Yes, I do."

I said, "Well, I was with Hymie Berk on 26th Street. Now I am trying for myself." I says, "Would you like to buy from me?"

He says, "What do you handle?"

I said, "I handle everything from dresses, coats and suits—anything you want."

So I asked him what did he want?

He says, "I want nice merchandise, better dresses."

I says, "I'll get that."

He said, "All right, you can start sending."

I started shipping immediately.

Mr. Coleman: At this point, if your Honor please, I would like to note an objection, that this testimony is not applicable at this point to Max Schaffer or the defendant Norman Schaffer, this conversation that he just related.

The Court: The jury heard him say that he talked with [fol. 384] Mr. Marco.

Mr. Coleman: That is right, your Honor. A conversation between this witness and Mr. Marco at this point would not be chargeable to the defendants Schaffer.

The Court: Of course not.

Mr. Steinberg: May I also ask your Honor to instruct the jury that any conversations not in the presence of any of the defendants are not applicable to them.

The Court: No, I can't be that broad, because it might tie in later on if conspiracy is proved.

Mr. Steinberg: Yes, but at this point it hasn't been

proved, and at this point it is not admissible. Will your Honor so instruct them?

The Court: At this point it is admissible, but it doesn't apply to the people not named, until the Government proves the conspiracy.

Mr. Steinberg: Unless your Honor rules it is a prima facie case.

The Court: That is correct.

Mr. Steinberg: Thank you.

By Mr. Moran:

Q. Now, during the time that you did business with [fol. 385] Benjamin T. Marco, did you send him an invoice for each and every shipment that you made to him, under the name of A. Shaffler?

A. Yes, I did.

Q. From whom did you purchase this merchandise that you sold to Max Schaffer?

A. From the drivers in the garment area. I had my brother pick them up. I would take care of the office. He would go to these various drivers that used to get overs and packages from certain depots, and such, and would bring them to me.

Mr. Coleman: Now, your Honor, I ask that this latter portion be stricken out. The question is, "From whom did you make a purchase of merchandise that you sold to Max Schaffer?"

The Court: That's right; and he said, "From various drivers."

The Witness: That is correct.

Mr. Coleman: I move that that is answered.

Q. And from where or from whom did you obtain the merchandise that you shipped to Norman Schaffer?

A. Also from these various drivers that gave my brother—

Mr. Coleman: Now, your Honor, I object to that unless [fol. 386] he knows of his own knowledge. What someone else might have told him would not be admissible.

The Court: That's right.

Q. From whom, if you know, did you obtain the merchandise that you sent to Benjamin T. Marco?

A. Oh, well, we had these, these few drivers that were—

Mr. Katz: Your Honor, I object to the form of the question and what proposes to be an answer. "We had," I submit, is improper.

The Court: I don't understand your objection to the question also, sir.

Mr. Katz: He said, "we," your Honor, as I understand it. I don't know whom he is referring to.

The Court: Then you don't object to the question. The answer is what you object to.

Mr. Katz: Yes.

The Court: Sustained.

Q. Just tell us what you did, and if you know, just tell us how you obtained the merchandise that you sent to Benjamin T. Marco?

A. Well, my brother knew various drivers in the gar- [fol. 387] ment area that gave him packages.

Mr. Katz: We object, your Honor. We object to what his brother did, or anything relating to his brother when he was not there. It is obvious he wasn't.

The Court: It is obvious he wasn't what?

Mr. Katz: I mean that he wasn't present, from what he has just said. He said his brother—

The Court: Is it a fact that all of the merchandise you sold to all of these defendants were purchased from these drivers in the garment district?

The Witness: Yes, that my brother took care of that side of the garment—there is some truckmen that came to the premises of 48 West 25th Street, which I was running by myself, that I paid personally to.

The Court: And the others were by your brother?

The Witness: That is correct.

Mr. Steinberg: Now, if your Honor please, I object to that portion of your Honor's question, and to the answer which deals with transactions by his brother, not in his knowledge or his presence.

The Court: I'll allow it.

[fol. 388] Mr. Steinberg: Exception.

Q. And did your brother bring to your office all of the merchandise that he obtained from the drivers?

Mr. Steinberg: Just a minute. I object to it.

The Court: I will allow it.

Mr. Steinberg: Your Honor, it calls for hearsay. It is a double-barreled question. He said all the merchandise he obtained from the drivers he bought, but I think the form is objectionable.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. Whatever merchandise he obtained from these various drivers in the garment area, and whatever I picked up from the drivers that called me up, I could handle personally what driver came to my premises, but I don't know the drivers that he picked up from. But any packages that he gave me, I took care of, like coats, suits and dresses, I only had Schaffers and Marco.

Mr. Coleman: I object to that latter portion, your Honor. It is not responsive.

The Court: Sustained.

Q. The question is, did your brother, Mario Stracuzza, [fol. 389] give you each and every package that he got from the drivers, and bring it to the office?

A. Yes, he did.

Mr. Steinberg: I object.

Please, his Honor instructed you before to wait.

If your Honor please, I object to the form of the question.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. Yes, whatever packages my brother picked up in the garment area, he brought to me.

Q. By what means were these packages purchased, by check, cash, or whatever means?

A. We always paid cash.

Mr. Coleman: I object to that.. That is leading this witness.

The Court: Overruled.

Q. How did your brother get this cash?

Mr. Steinberg: Object to that as calling for hearsay.

The Court: I will allow it.

Mr. Steinberg: Exception.

A. Excuse me?

[fol. 389a] The Court: How did your brother get this cash?

A. Well, I would draw it from the Charles Santangelo bank and give it to him so he can purchase this merchandise.

Q. Can you tell us how much Max Schaffer paid for the merchandise that you sent him?

A. Sixty-five per cent.

Q. Of the manufacturer's invoice price?

A. That is correct.

Q. Can you tell us how much Norman Schaffer paid for the merchandise that was sent to him?

A. Same thing, sixty-five.

Mr. Coleman: Object to that, if your Honor please.

Do I understand from the question that we are now at 48 West 25th Street, Mr. Moran?

Mr. Moran: We are talking about 48 West 25th Street.

Mr. Coleman: I understand. All right.

The Court: You withdraw the objection?

Mr. Coleman: Yes, I didn't know at what point we were, your Honor.

The Court: All right.

[fol. 390] A. Sixty-five per cent, also.

Q. Can you tell us how much Hyman Karp paid for the merchandise that you sent to him?

A. Well, Karp—I called him up, and I told him I wanted 60 per cent.

He says, "I wouldn't pay less than 50," because he was thinking of 26 again.

I told him, "Either you give me 55 or I won't sell you."

We finally agreed with 55 per cent, and that is when I sold it to him.

Q. When did you have this conversation that you just alluded to?

A. Well, right at the beginning of May, in the middle of May, when I first did business. I called him on the phone and I told him.

Q. Did you identify yourself?

A. Yes, I told him, I says, "Karp, this is Tony." I said, "Look"--

The Court: You said what?

The Witness: I said, "This is Tony."

The Court: What did you say before that?

The Witness: "Karp."

The Court: "Karp"?

[fol. 391] The Witness: Calling him.

The Court: Yes.

A. (Continuing) I said, "Karp, this is Tony." I said, "Look, I don't want no aggravation like I had on 26th Street, beating me on two previous occasions on bill numbers that Berk claimed, which totaled about $700." I says, "I will do business with you on the condition you don't give me any aggravation."

He said, "Don't worry about it." He said "You can start shipping." And that is what I did.

Q. How would you send this merchandise to Max Schaffer?

A. Well, by U. S. Packing, on 38th Street.

Q. Did you deliver the merchandise?

A. My brother. We had a ten-and-a-half truck that we delivered this merchandise to the packing house.

Q. Did you use the same method of transportation, as far as Norman Schaffer is concerned?

A. Yes, sir.

Q. And how did you ship the merchandise that you sold to Hyman Karp?

A. Railway Express.

Q. Did you deliver to Railway Express office, or did someone come to you?

[fol. 392] A. No, down in the street the truck is always parked, they stay there until about 6:30, 7 o'clock; or I have his prepared last, I bring it myself to the Railway Express downstairs. I put it on a flat and push it in the elevator and get signed for it off the truckman downstairs, that is, the Railway Express.

Q. And how did you ship the merchandise that you sold to Benjamin T. Marco?

A. Also by Railway Express.

Q. What price did you sell the merchandise to Benjamin T. Marco for?

A. Oh, Benjamin—60 per cent.

Q. At the manufacturer's price?

A. Yes, sir.

Q. Did you ship the merchandise in cartons?

A. Yes. If the carton was clean, I can retape it and write over it. If it was—if it was a damaged box, I would just scribble out, break it up, and just fold them—I would have a whole stack of them, and just tie it and threw them in the hallway.

Q. How long did you keep the merchandise after you received it in the office?

A. Well, it always went out the same day.

Q. Always went out the same day?

[fol. 393] A. Yes, sir.

Q. Did Max Schaffer make a specific order for merchandise?

A. Well, he preferred coats, suits and dresses.

Q. Did he visit your office while you were at 25th Street, from May through June and July of 1953?

A. Yes, he did.

Q. How often?

A. He would come about every week to every ten days.

Q. And did Norman Schaffer come to your office during that period of time?

A. Yes, sir.

Q. How often?

A. Same thing.

Q. Every week or ten days?

A. They would come in on—yes, most times they would be together.

Q. And did that continue right up until the 28th of July?

A. That is correct.

Q. Can you tell us the circumstances of how you first did business with Max Schaffer on 25th Street?

A. Well, Schaffer, I called him up on the phone and I [fol. 394] told him that I—

Mr. Coleman: Your Honor, at this point I would like the witness to fix the time of this.

The Court: Yes.

The Witness: It was in May of 1953.

Q. Can you fix the date at sometime in May?

A. Well, could be somewheres about, say, the middle of May, also. I was starting the same, like these other accounts.

Q. You had a telephone conversation with Max Schaffer?

A. Yes, sir.

Q. Can you tell us what you said to him and what he said to you?

A. Well, I told him that I opened up an office for myself; I had a lot of aggravation with Berk, and I would like to do business with him.

He said he will be in about a week.

So I went to 110 West 40th Street—

Q. That is Berk's office?

A. Yes, that is Sol Eisenberg and Berk's office, at 110 West 40th Street, and I saw him up there, and—

Mr. Coleman: Your Honor, first we have only a telephone conversation. Now he is going into something else. [fol. 395] I understood Mr. Moran asked him what was the telephone conversation?

The Court: Yes.

Mr. Coleman: I object to anything further than conversation at this point.

The Court: Sustained.

Q. Did there come a time when you had a further conversation with Mr. Max Schaffer?

A. Yes.

Q. When?

A. A week later, after I called him.

Q. Where?

A. At 110 West 40th Street. I waited until he came downstairs from Sol Eisenberg's office, which I went into and I spoke to him there. I didn't want to speak there, because I didn't want to see Solly seeing that—Eisenberg knowing that I am speaking to any of his accounts, which I am trying to take away from him. So I waited until he came downstairs, and I says, I says, "Max," I said, "look, I am in business for myself."

Mr. Coleman: I can't hear the witness. Would you speak louder, please?

The Court: Keep your voice up, please.

[fol. 396] A. (Continuing) I said, "Max, I am going in for myself"—Norman was with him—I says, "I'd like that you buy from me." I said, "I had a lot of aggravation with Berk," I says, "and he give me the business in the money part of it. If you like to do business with me, I can give you the same merchandise that he can give you, and maybe better, because we are getting merchandise that just came out from the manufacturers."

Q. And what did Max Schaffer say, if anything, to you?

A. "Well," he said, "give me your telephone number and I will call you when I come back." And he did call me, and I told him to come up—a week later he called me. I told him to come up. He came up and he looked at the merchandise and he liked it, and I prepared the form.

Q. Now, this time that he came up to your office, it was a week later after you had this conversation; is that correct?

A. That's right.

Q. Was Norman Schaffer with him at that time?

A. Yes, sir.

Q. And Norman Schaffer was present at the earlier [fol. 397] conversation, outside of Berk's office; is that correct?

A. That's right.

Q. Did you on this occasion show Max Schaffer and Norman Schaffer the merchandise that you had in the office?

A. Yes, I did. I left mine—while operating my business, I left most of it in the boxes, so they could pick out what they liked, and if they liked it, I would show them the bill and repack it in another box; or if the box is good, I would just retape it over and make a copy of A. Shaffer, and take the manufacturer's bill—

Mr. Coleman: Now, your Honor, this latter part is not responsive.

Q. Just tell us—excuse me—just tell us what you did on this particular occasion?

A. Well, he came up; I showed him the merchandise and the manufacturer's bill, describing the merchandise.

Q. Now, you say that Norman was there, too?

A. Yes.

Q. Did you show him this bill?

A. Yes, sir.

Q. During the time that you dealt with the Schaffers, [fol. 398] beginning sometime in the middle of May, as you say, until the end of July, did you show them copies of the manufacturer's invoice on the occasions that Max Schaffer came to the office?

A. Yes. I always kept the invoices.

Q. Did you show them to them?

A. Yes, I did.

Q. Did you show the manufacturer's invoice to Norman Schaffer on the occasions that he came to the office?

A. Yes, I did.

Q. Now, did there come a time that you had a conversation with Max Schaffer concerning the manufacturer's invoice?

A. Yes.

Q. When?

A. This is when he was up to the office, the same day that he came, the first day he came, which was a week after the conversation from 110 West 40th Street.

Q. This was sometime in May; is that correct?

A. That's right; May of 1953. I showed him the merchandise; I showed him the bill. I told him the price that I wanted to pay me, and he agreed. So I took my bill,

[fol. 399] and the manufacturer's bill of the merchandise, and showed it to him.

He said, "I want it."

I said, "All right, you want me to send you the copy?"

He said, "Yes."

"Well, if that is what you want, I will send my copy, A. Shaffler, with the manufacturer's bill."

Q. Did you send the invoice to him intact?

A. Well, well, I have—a lot of times I cut—they have a number on there—

Mr. Coleman: Your Honor, I object to that, "a lot of times." I understand we are dealing with one, with the first specific one, and I object to "a lot of times."

The Court: Sustained.

Q. Tell us what you did with this manufacturer's invoice on the first occasion?

A. Well, they have the consignee, showing, say, for instance, it was going to—

Mr. Coleman: Your Honor, I object to that as an illustration with respect to this first transaction. I think his answer is either specific or it must be stricken.

[fol. 400] The Court: Do you remember the name of the consignee at all?

The Witness: No, not on the manufacturer's bill.

The Court: The Government lawyer wants to know what you did with the invoice, the manufacturer's invoice, on this first occasion, when you were doing business with Max Schaffer? Do you remember what you did with the invoice?

The Witness: Yes, I would show it to him, if that is the merchandise that he picked out.

Mr. Coleman: I object to that, your Honor.

Are you interrogating, Mr. Moran, on the first shipment or purchase that was made by Max Schaffer from this man on 48 West 25th Street?

Mr. Moran: I am trying to find out from the witness what he did with the invoice that he is describing as sending to Max Schaffer.

Mr. Coleman: Your Honor, I object.

The Witness: Well, I would take—

Mr. Coleman: Just a minute, please.

I object. It is obvious that there must have been a first purchase from Shaffler at 48 West 25th Street. If [fol. 401] that is the transaction now being questioned about, then I object to the answer unless it is specifically with respect to that merchandise which became the subject of the first transaction.

The Court: Are you pressing the point that it is the very first transaction?

Mr. Moran: No, I am just trying to find out what the—

The Court: Then reframe your question and let's start all over again.

Q. Can you tell us what you did with the invoice, the manufacturer's invoice, when you sent the copy of the invoice to Schaffer? A. Well, I would take—

Mr. Coleman: Just a minute. I object to that question, because the question assumes that the witness had done something, which is not the subject of the question.

By the Court:

Q. Did you ever send any invoice to the Schaffers at all?

A. Yes, I did.

Q. Do you remember the first time you did it?

A. Yes, sir.

[fol. 402] Q. Now, tell us how you did it and what you did with that invoice the first time you did it?

A. Well, I would take the invoice and take my A. Shaffler bill. I would copy the same thing that is written on that invoice from these packages that my brother brought me, and put on the A. Shaffler bill, and write the identical information, style, quantity and price, and the full amount, the same ident—the same thing as the bill itself. Then I would take the invoice, I would cut the top half of it, which was identifying the original consignee that was supposed to go to. I would cut the bottom—there is numbers on the bottom of the bill; they have six or seven

numbers, and the name would be on there of the original manufacturer—I would just cut the numbers off and send it with the A. Shaffler bill, and pack it in the box, and send it to U. S. Packing.

By Mr. Moran:

Q. In other words, your style number was identical to the style number shown on the original manufacturer's bill?

A. That's right.

Q. And your unit price, or—and total price was the same?

[fol. 403] A. That is correct.

Q. And did you follow this procedure for the shipments of merchandise that you sent to Max Schaffer thereafter?

A. That is correct.

Q. And did you follow the same procedure with Norman Schaffer?

A. Yes, I did.

Q. Now, did there come a time when you had a conversation about the original manufacturer's invoice with Hyman Karp?

A. Yes.

Q. When?

A. In the middle of May of 1953, when I first started to do business with him.

Q. What conversation did you have? What did he say to you and what did you say to him?

A. Well, I told him, when we agreed with the price, and I told him I had children's wear on the premises now "that I can ship you, I will send you the copy of the manufacturer plus my own bill, is it all right?"

He said, "Yes, that is what I want," because I am new to them, I am taking this upon myself.

[fol. 404] Q. Did you identify yourself to Karp in this first conversation?

A. Yes. I said, "This is Tony." I said, "Remember me from 33—26th St.?"

I said, "Now, I am in for myself."

Q. Did there come a time when you had a conversation

with Benjamin T. Marco about the original manufacturer's invoice?

A. Yes.

Q. When?

A. In June of 1953.

Q. What conversation did you have? Tell us what you said and what Marco said to you?

A. Well, I told him that I was to Patty Ann Frocks, which Fred Kusnick operates, and I told him, "He recommended me to sell to you, and I get the latest merchandise that just come from manufacturers. Would you like to buy from me?"

He said, "Yes."

So I told him, "Well, I can start shipping now, if you want to."

He said, "What price ranges dresses do you have?"

And I told him, and he says, "Okay," he says, "you can [fol. 405] ship them."

I says, "Well, I will even give you the manufacturer's bill from the packages itself with my invoice; is that all right?"

He says, "Yes," and I also sent him the manufacturer's bill with my invoice of A. Shaffler.

Q. You did this on each and every occasion thereafter?

A. Yes, sir.

Q. Now, were there times when you sent the entire manufacturer's invoice to Max Schaffer?

A. Yes, there is times I would just scribble the consignee out of the original bill of these merchandise, just scribble the original consignee out, and cut their bill number on the bottom—if there's a bill number on top, I would cut the bill number on top—and keep a duplicate for myself.

Q. Of the manufacturer's invoice?

A. That is correct.

Q. And did you do the same thing with Norman Schaffer?

A. Yes, I did.

Q. And did you do the same thing with Hyman Karp?

A. Yes, I did.

[fol. 406] Q. And with Benjamin T. Marco?

A. That is correct.

Q. Now, on the occasions that you cut the portion of the invoice, of the manufacturer's invoice, and sent one portion of the invoice, did that portion of the invoice show the manufacturer's name on it anywhere?

A. Yes, right on the bottom. It would be right in the middle, just like they would have—they would have a big writing on top, on the bottom it would be in print of the same name.

Q. On those invoices that you did not cut anything other than numbers, did the invoice show the date?

A. Well, yes, a lot of them did show the date. It would be—it shows—there is a few boxes there, it would tell even a salesman, sometimes; it would describe even the salesman on that bottom half of the copy.

Q. And you say that there were occasions that you retained a copy of the original manufacturer's invoice?

A. Yes, I always kept a duplicate for myself. If they wanted to give me a return, it would refresh my memory of what they're giving me back, so I can tell only by the [fol. 407] duplicate. If I don't keep duplicate, I won't know what they give me back.

Q. And when you received payment, what did you do with the invoice, manufacturer's invoice?

A. Well, I would tear it up.

Q. And do what with it?

A. Well, on the ledger, where I make the amount that I ship to them, if they paid me, I just cross it right out; would have a bill number identifying the date that I sent it, the bill number and the amount, which would correspond the same with the bill.

The Court: It is 4:30. Are you going to another subject now?

Mr. Moran: We can adjourn here, your Honor.

The Court: We, ladies and gentlemen, we will adjourn for the evening and meet again tomorrow at 10:30.

Good night.

(Adjourned to April 22, 1958, at 10:30 A. M.)

[fol. 408]

IN UNITED STATES DISTRICT COURT

[Title omitted]

C. 145-232

C. 145-233

New York, April 22, 1958;
10.30 o'clock a.m.

Trial resumed.

(Jury in box.)

ANTHONY STRACUZZA, resumed.

Direct examination (continued).

By Mr. Moran:

Q. I believe that at the conclusion of your testimony yesterday, Mr. Stracuzza, you had testified as to a certain ledger that you had kept concerning your dealings with your customers; is that correct?

A. That's right.

Q. Now, would you tell us what this ledger looked like and what its purpose was?

A. Well, it's a big book, about a foot long, and I would make a notation of the invoice of A. Schafler, going to these stores, describing the dates, the bill number of my invoice and the amount of merchandise that had been shipped to these people.

Q. Did you keep in that ledger a separate record for each shipment that you made to each one of the defendants [fol. 409] now on trial, Max and Norman Schaffer, Hyman Karp and Benjamin T. Marco?

A. Yes, I kept records on—

Mr. Steinberg: May I respectfully ask your Honor to caution the witness again, as you did yesterday, to answer questions and no more?

The Court: Will you try to answer the question yes or no, if it calls for a yes or no answer, and not expand on it?

The Witness: Well, yes.

Q. I show you Government's Exhibit 52 for identification and ask you if you can identify this book?

A. This is the ledger book that I kept, like, for instance, "Schaffer," here, describing the dates; here is the bill number and the amount of the invoice being shipped to him. Also, Hyman Karp, of Fall River, Mass., dates—

Mr. Steinberg: May I respectfully object to any—

The Court: Sustained, yes.

Q. Just tell us what the book is, without telling us what is in there.

A. Well, this is the record that I shipped to these gentle-
[fol. 410] men here.

The Court: In other words, that is the ledger you just described, is it?

The Witness: That's right.

The Court: All right.

Q. Now, I direct your attention to the lefthand column of the page. Just tell us what those figures represent.

A. That is the date.

Q. The middle column of the page?

A. That is the amount.

Q. The invoice of amount?

A. Of my bill that I sent to them.

Q. And the last column, the third column, the righthand column?

A. That is the bill number of my invoice of A. Schafer.

Q. And you followed this procedure for each one of the defendants, Max Schaffer, Norman Schaffer, Hyman Karp and Benjamin T. Marco?

A. That is correct.

Q. Now I ask you what this line drawn diagonally across the page represents, through those three columns of figures?
[fol. 411] A. Well, when they would pay me—

Mr. Steinberg: I respectfully object to any testimony about an exhibit not in evidence.

The Court: Yes.

Do you offer it in evidence?

Mr. Moran: I am going to offer it now. I will let counsel examine it.

The Court: Was the book kept by you in the regular course of your business?

The Witness: Yes.

Mr. Steinberg: May I respectfully object to that question, if your Honor please. This business he was testifying to is not a business; it was a thieves' den.

The Court: You concede, do you, for all defendants that all of the goods were stolen?

Mr. Steinberg: I respectfully object to that.

The Court: What do you mean by "thieves' den," counsel? I don't understand that.

Mr. Steinberg: It was a business of selling and buying stolen merchandise, according to what I understood from the opening here, and if your Honor asks me to make [fol. 412] concessions before the jury, I respectfully except.

I move for the withdrawal of a juror.

The Court: I will deny it, because as I understood your opening, those were your very words.

Mr. Steinberg: If your Honor please, I except to that further statement and move for the withdrawal of a juror.

The Court: All right, you have an exception.

Mr. Steinberg: All right.

Now I object to your Honor's question about "regular course of business." The exception of the hearsay rule covered by "regular course of business" is to allow certain hearsay evidence, where there is a guarantee of authenticity from the fact that a legitimate business is carried on, and from the fact that legitimate business requires certain entries, and that does not exist in this case.

The Court: You may have an exception.

Mr. Moran: May I be heard for a minute on that, your Honor?

The Court: It seems to me it is moot now.

Mr. Moran: All right. I merely was going to say we are not offering it as a record kept in the regular course [fol. 413] of business.

* * * * * * *

[fol. 426] Direct examination resumed.

By Mr. Moran:

Q. Now, Mr. Stracuzza, I show you again Government's Exhibit 52, and I direct your attention to the page marked "Schaffer."

Mr. Steinberg: It is not marked "Schaffer," if your Honor please.

Mr. Moran: All right, "S-h-a-e-f."

Mr. Steinberg: Yes.

Q. (Continuing) And I direct your attention to the middle column, which you have identified as the amount of your invoice that you sent to Schaffer; is that correct?

A. That is correct.

Q. Now, does this figure in the middle column represent the amount of money that you received in payment of that invoice, or what does that represent?

[fol. 427] A. It represents the amount of the bill that I shipped to him.

Q. In other words, directing your attention here to the second line of 64, $403.92, under your invoice No. 12, did you receive $403.92, or a percentage of that?

A. A percentage of that.

Q. Now, is it your testimony that each one of the entries here under the page marked "S-h-a-e-f," that the items, the amounts here under your bill numbers represent only your bill numbers and not the payment that you received?

A. Only the bill number.

Q. In other words, this middle column, you received a percentage of the figure shown there?

A. That is correct.

Q. And each one of these lines drawn diagonally across the page represents a payment of those invoices; is that correct?

A. That is correct.

Mr. Steinberg: I think, just to correct the record, you mean straight across, not diagonally.

Mr. Moran: Straight across. I am sorry.

Q. Now directing your attention to the page marked [fol. 428] "F and R," to the middle column there, which you have identified as being the amount of your bill, did you receive from Hyman Karp the amounts shown there on that page, or a percentage of those amounts?

A. A percentage of those amounts.

Q. I direct your attention to the page marked "Marco's," and to the center column there, the figures that you have identified as being the amount of your bill numbers; do those figures represent the amount of your payment, or did you receive a percentage of that amount?

A. A percentage of that amount.

Q. Now, for these groups of figures on the page under the title "Marco," that are not crossed out, is it your testimony that you did not receive payment for those bills; is that correct?

A. That is correct.

Mr. Coleman: May I see that a minute, Mr. Moran? Thank you.

Q. I believe yesterday you testified that you first started to do business with Hyman Karp sometime in the middle of May 1953, and that business—

[fol. 429] Mr. Steinberg: Is that so? I mean, does the witness acknowledge that?

Q. Is that correct?

A. That is correct.

Q. And that business was initiated by a telephone conversation that you made or had with Hyman Karp at that time.

A. That's right.

Q. Now, when you were on 26th Street during the period from September of 1952 until May, or rather March of 1953, did there come a time when you made a shipment of zoot suits to Hyman Karp?

A. Yes, I did.

Q. Can you tell us when this shipment was made?

A. Shipment was made in March of 1953.

Q. Getting back to 25th Street, after this initial conversation that you had with Karp on the telephone in the middle of May 1953, did there come a time when you had a further conversation with Hyman Karp?

A. Yes. I remember him calling—

Q. Just tell us if you did or not.

A. Yes, I did.

Q. Can you tell us when this subsequent conversation [fol. 430] took place?

A. Say, in about the, about the third week of May.

Q. 1953?

A. 1953.

Q. Can you tell us what you said to Karp and what he said to you on that occasion?

Mr. Coleman: If your Honor please, at this point I would like to note for the record that there is an objection to these declarations or conversations between the witness and Mr. Karp as not being binding upon the defendants Max Schaffer and Norman Schaffer.

The Court: That is true. It is not binding on those defendants not named, until the Government proves its conspiracy charge.

Mr. Coleman: I just wanted that, so that I won't have to repeat it each time, your Honor.

Mr. Katz: We, of course, have the same comment, your Honor.

The Court: I said all defendants except those named.

Mr. Katz: Yes, sir.

The Court: You were about to tell us what you said and he said.

Mr. Steinberg: May I just, if your Honor please, ask [fol. 431] was this by phone or in person, or where?

The Court: I think he said by phone. I will ask him: was this by phone?

The Witness: Yes, sir.

The Court: And the phone call was between what cities?

The Witness: Fall River, Massachusetts, and myself, on 25th Street. He called me up and told me if I had protection in New York. I told him that I did. I says, "Don't worry," I said, "I can take care of my end." I says, "Don't worry."

Q. Would you speak—

Mr. Katz: I can't hear you.

Q. Would you speak up a little louder?

A. (Continuing) He said, "Can you take care of New York?" Because I am doing this myself, I wasn't with Hymie Berk, like on Third—excuse me, on 26th Street, because Berk just had certain ways of telling me what to do and what not to do. Here I took it upon myself, so I didn't have protection, but I told him I did have protection.

Q. Is that the entire conversation at that time?

[fol. 432] A. Well, that is all. It was just pertaining to if I had protection. I says, I says, "Yes."

He says, "Well," he says, "that is all I want to know, because," he says, "I don't want no trouble."

I says, "Don't worry about it."

Q. Now, did Hyman Karp come to your office when you were on 25th Street?

A. No, he never did.

Q. And how was your business conducted with him?

A. By telephone.

Q. All by telephone?

A. Yes, sir.

Q. Would you call him?

A. Well, I would call him if I were in doubt on, say, for instance, a very big amount of one style, and I'd want to know if he would accept it, because there was one time I did send him a big amount of children's blouses and he told me, he said, "I won't pay you this price, because the price is wrong on this here."

But I had a regular manufacturer's bill, and I believe that this is the price, because every other manufacturer's bill was no different than the bill of this children's blouses [fol. 433] I sent him.

Q. And you had conversations like this?

Mr. Steinberg: May we have no leading, if your Honor please?

The Court: Yes, don't lead him.

Mr. Moran: All right.

Q. Did you have conversations at other times?

A. Well, there was one time I remember him calling me. He told me, he says—

Q. Can you fix the time, first of all?

A. It might have been, say, about the third week of June. He says, "I am going on a vacation," he says. He says, "You can keep sending the shipments in."

And I says, "All right," and I kept doing it.

Q. Now, did you keep a record of the invoices that you sent to Karp?

A. Yes, I did.

Q. I show you Government's Exhibit No. 53 for identification, and ask you if you can identify this?

A. Yes, this is—a duplicate copy of the original invoice of A. Schafler that I sent to him. I would put my original [fol. 434] copy on here, put a carbon under it, and write the same identifying marks from the manufacturer's bill onto my original copy, leaving me a duplicate.

Q. Speak up a little louder.

A. I said that I would send him an original bill with a carbon under it, making this a duplicate, so in case he had a discrepancy pertaining to the merchandise I shipped him, only through this bill number would I be able to identify what he is talking about.

Q. Now, did you keep this, or did you keep such a record, referred to in Government's Exhibit 53 for identification, from the start of your business dealings with Karp?

A. Well, I wouldn't say right at the beginning, no, I did not.

Q. Would you tell us when you did begin to make such a record?

A. Well, I started to make a record of duplicates for only one simple reason:—

Mr. Steinberg: May it please the Court—

Q. Just when?

A. When? This was in June.

[fol. 435] Mr. Steinberg: That is the answer, if your Honor please.

The Court: You don't want the year?

Mr. Steinberg: Well, I assume it was '53.

Q. Is it '53?

A. Yes, sir; 1953.

Q. And you didn't make it before that time?
A. No, I did not.

Mr. Moran: I offer this in evidence.

* * * * * * *

[fol. 441] Direct examination resumed.

By Mr. Moran:

Q. Directing your attention again to Government's Exhibit 53, did you keep any other copies of invoices that you sent to Hyman Karp at Fall River Bargain Center? Is this your only record?
A. This is my only record.

Mr. Moran: May I show these books to the jury, your Honor?
The Court: Yes.

(Exhibits handed to jury.)

The Court: Let's get on with the case, can't you?

Q. I show you Government's Exhibit 54 for identification through Government's Exhibit 107 for identification, and I ask you if you can identify these?
A. Yes, these are my invoices. It is a duplicate of my invoice that I sent to Fall River, Massachusetts. These are the same copies of the manufacturer's invoice. These are my original invoices.
[fol. 442] Q. Now, directing your attention to Government's Exhibit 54 for identification, I ask you what does this lefthand column represent?
A. That represents the style.
Q. The style number?
A. Yes, of the merchandise.
Q. And what does this second column represent?
A. That represents the quantity, the amount.
Q. And the next column?
A. Describing dozens, how many pieces.
Q. And the next column?
A. The price of a dozen.
Q. And the final column?

A. Total amount of that dozen.

Q. And at the bottom of the last column, what does that figure represent?

A. Total amount of the whole invoice.

Q. And did you use the same description in each one of Government's Exhibit 54 for identification through 107?

A. Yes.

Mr. Coleman: Pardon me? Did I understand that 54 to 107 the witness identified as duplicates to Karp at Fall River?

[fol. 443] Mr. Moran: That is correct.

Mr. Coleman: No other of the defendants?

Mr. Moran: Yes.

Mr. Coleman: I see, all right. I just wanted to make sure.

Q. Now, those style numbers reflected on those bills—

Mr. Steinberg: I object to anything not in evidence. If he wants to offer it, I will be glad to look at it. I may agree, but I object to questions on papers not in evidence.

The Court: I will allow it.

Mr. Steinberg: Exception.

Q. Those bills, the style numbers on those bills, were they the same as the style numbers on the original manufacturer's invoices?

A. Yes, they are.

Q. And the prices were the same?

A. Correct.

Mr. Steinberg: I object to leading, if your Honor please

The Court: Yes, you are leading.

Q. Will you tell us what information is reflected on those bills that were on the manufacturers' invoices?

[fol. 444] A. Each invoice describes the contents of a package, and the same notations of a manufacturer's invoice, from style of the merchandise in there, to the prices, identifying the same amount, the same quantity as a manufacturer's invoice, just making another copy of it. This is my—would be the same as my original invoice.

[fol. 458] Direct examination resumed.

By Mr. Moran:

Q. During the time that you were doing business with Benjamin T. Marco, under the name of A. Schaffer, on 25th Street, did there come a time when he came to your office?

A. Yes, he did.

Q. When?

A. About the second week of June of 1953.

Q. Will you tell us what, if anything you did on that occasion?

A. Well, he'd come up to my office. I had the packages displayed on the floor, as well as some coats on a rack. He picked out then and there whatever he had wanted. I showed him the invoice, describing how many was in the package that he wanted. He would say, "That's okay for me," and I would—

Q. When you say "the invoice," what do you mean?

A. The manufacturer's bill of the package.

Q. Was this the only occasion that Marco came?

A. No, he came on about three occasions.

[fol. 459] Q. When was the next occasion after the first occasion?

A. I'd say about the first week of July, and then he came with his wife, I believe, that it was his wife, around the third week of July of 1953.

Q. Now, would you tell us what happened, if anything, during the second meeting that you had with Marco in the first week in July?

A. Well, he had come up in the same respect, to look at the merchandise. I would show him the manufacturer's bill of the merchandise, and see if he liked it. If he liked it, I would get it ready for the Railway Express for him.

Q. Now, what happened on this third occasion that you spoke of?

A. Then he came in with his wife. I didn't have no conversation. Introduced me to her, and I said, "Hello," that is all.

Mr. Katz: I can't hear him, I am sorry.

The Court: Keep your voice up.

He said he had no conversation with the lady; just was introduced.

The Witness: Yes.

Q. Did you have any conversation with Marco?

[fol. 460] A. Yes, I did.

Q. What did you say to him and what did he say to you?

A. Well, he says, "Look, I want a lot of nice things and don't send me too much of a number."

I said, "Okay." I says, "Sometimes I can't help it, because the driver sometimes would give me a repeat, the manufacturer would be the same, and the same style"—

Mr. Katz: If your Honor please, I object. It appears that this is not a conversation with Marco, but his explanation.

The Court: Was this the conversation you had with Mr. Marco or not?

The Witness: Yes, this is the conversation with Marco.

The Court: All right, continue.

Objection overruled.

Q. Would you continue with what you said in this conversation?

A. He says, "Don't give me a lot of one style."

So I says, "I will try not to, but there is times I can't help it, because the driver sometimes gets the same manufacturer, and a lot of times they have a lot of the same [fol. 461] styles, and once in a while we have a different style than that." I says, "I can't help it. If you don't want it, just tell me. I just can't break up a package, and otherwise it spoils the whole contents. Then I have to change boxes and everything. I always try to sell the package as is."

Q. During the time you were dealing with Marco, did there come a time that you had a telephone conversation with him?

A. Yes, I did have a telephone conversation.

Q. When?

A. This was about the second week of July, telling me that I am sending him too much of one number and too

much of high-priced dresses, gave him a lot of 23.75 dresses. He says, "It's no good," he says, "I am going to return your merchandise."

I says, "Marco," I says, "if you return me merchandise," I says, "I don't want to do business with you no more," I says, "because I don't want no aggravation. I'm giving you the latest; it's brand new; it's first coming from the manufacturer. You have to buy it that way if you want [fol. 462] that price range merchandise."

Q. Did Marco, in fact, return merchandise to you from time to time?

A. Yes, he did.

Q. Did you communicate with Marco by any other means than over the telephone?

A. I wrote him a letter at one time.

Q. Did you receive replies?

A. Yes, I did. I remember—

Q. I show you Government's Exhibit 121 and ask you if you can identify the writing attached to that?

A. Yes, this is a letter that I sent to him in my handwriting, to Marco, telling him that I buy my merchandise, and that I don't want him to try to pay me less, which he has been trying to do. I told him how much I wanted.

Mr. Moran: May I show this to the jury, your Honor?

Mr. Katz: May I inquire, please, is that the copy of the correspondence which we turned over to the FBI, and of which a photostatic copy was made?

Mr. Moran: If the witness knows.

Mr. Katz: Do you know that?

The Witness: Excuse me?

[fol. 463] Mr. Katz: Do you know that, Mr. Moran?

Mr. Moran: I am not a witness here.

Mr. Katz: I just asked the question.

The Court: You will have an opportunity to cross-examine him. I suppose this is an exhibit in evidence.

Mr. Moran: It has been received in evidence.

The Court: Go ahead.

Wouldn't it be easier to read it instead of having the people look at it?

Mr. Moran: All right.

The top of the page:

"Benjamin Marco. I buy my merchandise. I don't manufacture it. I have never sold for less than 65 per cent. I have four firms to sell to. He who pays me quickest gets the most goods, as you can see for yourself. I am not going to argue with you, but beginning with this shipment No. 63 I won't take less than 65 per cent, which is going to be all fall goods.

"Yours truly, A. Schafler."

The Court: Would this be a convenient time for a recess, Mr. Moran?

Mr. Moran: All right.

[fol. 464] The Court: We will take a short recess.

(Short recess.)

By Mr. Moran:

Q. Now, did you receive at any time correspondence from Marco?

A. Yes, I did.

Q. I show you Government's Exhibit 159 for identification and ask you if you can identify that document?

A. Yes. He showed me bill numbers of merchandise.

Q. Just tell us what it is.

A. It is a letter that he has wrote to me, describing what he has.

Mr. Katz: We object.

A. (Continuing) Paying me for—

Mr. Katz: We object.

A. (Continuing) Paying me for—

Mr. Katz: As to the contents of the letter, we understand that is the letter that he wrote.

I would like to see it.

(After looking) No objection.

Mr. Steinberg: May I have the number, please?

Mr. Moran: 159.

[fol. 465] May I read these to the jury, your Honor?

Mr. Coleman: Same objection, your Honor.

The Court: Same ruling. It is admitted against Marco only, subject to connection by the Government as to the other defendants.

(Government's Exhibit 159 received in evidence.)

Mr. Moran: (To the jury) This is on the letterhead of the Hotel Matz, Bluefield, West Virginia.

(Read to jury.)

Mr. Moran: The second one is on the stationery of Hotel Matz, Bluefield, West Virginia.

(Read to jury.)

Mr. Katz: Do you have a date to that letter, Mr. Moran?

Mr. Moran: There is no date.

By Mr. Moran:

Q. Did you receive payment for the merchandise that you went to Marco?

A. Did I receive payment?

Q. Yes.

A. Yes, I did.

Q. By what means?

A. By check.

[fol. 466] Q. Did you receive payment for all the merchandise that you sent to Marco during the time that you were dealing with him?

A. Not for all of them, no.

Q. I show you Government's Exhibits 160 through 174 and ask you if you can identify these documents?

A. Yes, these are photostatic copies of checks Marco has sent to A. Schafler.

Q. You are referring now to Government's Exhibits 160 through 173. Now, I direct your attention to Government's Exhibit 174 for identification.

A. Yes. That is a—that is a original check that Marco has sent to A. Schafler.

Q. I direct your attention to the back of Government's Exhibit 160 for identification. Are those signatures on the back of that check in your handwriting?

A. Yes, they are.

Q. And directing your attention now to the balance of those exhibits, from 161 to 173, are the signatures on the back of those checks in your handwriting?

A. Yes, they are.

[fol. 467] Q. I show you again Government's Exhibit 174 for identification; does your name appear anywhere on the back of that check?

A. No, it does not.

Q. But this is a check that you received from Benjamin T. Marco?

A. That is correct.

Mr. Moran: I offer these in evidence.

Mr. Katz: May I just look at the last?

(After looking) No objection.

Mr. Steinberg: Your Honor, same ruling?

The Court: Same ruling, yes.

(Government's Exhibits 160 through 174, inclusive, received in evidence.)

Q. Now, with this merchandise that you sent to Benjamin T. Marco, is it your testimony that you included a portion of the manufacturer's invoice?

Mr. Katz: Your Honor, we object to the leading form of the question.

The Court: Sustained.

Mr. Moran: All right, I have no further questions, your Honor.

* * * * * * *

[fol. 468] Cross examination.

By Mr. Steinberg:

* * * * * * *

[fol. 574] Q. How many accounts did you know that you were dealing with?

A. I knew this Beatrice Goldman, of Molly Zeitzner. I knew this Fred Kuznik of Patty Ann Frocks. I knew this Fleischers, of Hagerstown, Maryland. I knew this Marco,

of Bluefield, West Virginia, the Schaffers of Lebanon, Pennsylvania, and Fall River Bargain Center.

Q. When did you start that Schafler business?

A. Schafler?

Q. Yes.

A. In May of 1953.

Q. And you were arrested in July of '53?

A. That is correct.

Q. So you had about two and a half months of operation before you were arrested; is that right?

A. Yes.

Q. And in that two and a half months you did business [fol. 575] with eight different firms. Did you list eight? I don't know how many you listed, I am sorry. Let's see if I can list them again.

* * * * * * *

[fol. 765] Q. Very good. Now, the purchases made from A. Schafler by Max and Norman Schaffer were generally for merchandise that was selected by them on the premises; correct?

A. If they are there in person, they can select on the premises, yes.

Q. I asked you, Mr. Stracuzza, whether or not most of all of the purchases that they made from A. Schafler were purchases made by selection by them on the premises [fol. 766] themselves; isn't that true?

A. Yes.

* * * * * * *

[fol. 825] CHARLES W. MILLER, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Moran:

* * * * * * *

[fol. 830] Q. Was there some other point, some other vantage point, from which you made a surveillance?

A. Yes. We maintained a surveillance of the Stracuzza

office, which was designated as A. Schafler. We maintained a surveillance from a point directly across the street from their office, in the fourth story of that building.

Q. What was the address of that building?

[fol. 831] A. The address of that building was 45 West 25th Street; was occupied by the Acme Bedding Company.

Q. And how long was this surveillance maintained?

A. It was maintained intermittently from July 17, 1953, until July 28, 1953.

Q. And what happened on July 28th?

A. On July 28, 1953, at approximately 12:35 P.M., Mario, Tony and Dorothy Stracuzza were placed under arrest.

Q. Now, can you tell us any particular day that you made a surveillance from this place across the street?

A. On July 20, 1953, I maintained a surveillance of this room across the street from Mr. Stracuzza's business.

Q. For what period of time that day?

A. From approximately 10 A.M. until 4:45 P.M.

Q. Now, would you tell us what you observed on that occasion?

A. I observed Mario, Dorothy and Tony Stracuzza in the office on various occasion. Mario could come in and leave throughout the day. I could see him on the street getting into his truck, driving away. He would come back on three or four occasions, and bring cartons back. Tony and Dor-

[fol. 832] othy were engaged in packing cartons, removing articles which appeared to be clothing from cartons. They were looking at papers that they would remove from cartons. They would tear up papers and throw them in a carton, which was right outside their door, in a corridor. They packed cartons. I could see them also when a carton would be up at a window, it would appear to be black crayon mark off on the front of the carton.

Q. Would you describe to us from the place you were making these observations the general description of the room 409?

A. It was an unused portion of a storeroom of the Acme Bedding Company. It was on the extreme west end of the building, directly across the street, at a distance of about a hundred feet.

Q. Now, can you describe the conditions of room 409 from this vantage point?

A. Room 409 was a room that had very light colored walls. It was approximately 15 feet deep, and I would say about 20 feet in, across the front of the building.

Q. Was there a door in the room?

A. The door leading into the room was directly opposite [fol. 833] the window from our vantage point.

Q. What activities did you observe, other than you have described on this day, in room 409?

A. During the afternoon I saw Mario and Tony take several cartons from the room, which they put in Mario's truck. From my position I could see that the cartons had letterings on it, indicating that they were to Schaffer's, at Lebanon, Pennsylvania, and to the Fall River Garment Center, Fall River, Massachusetts. On another occasion I saw two men enter the room and remove, I believe it was, four cartons from the room. When I reached the street, I could see that the carton had the name "Marco" on it. I do not know where it was designated to.

Q. Now, during the course of your investigation, did there come a time that you had a conversation with the superintendent of the building there?

A. There was.

Q. And can you tell us what if anything you did as a result of this conversation?

A. As a result of this conversation, on July 23rd, 24th and 25th, 1953, prior to 8 o'clock in the morning, I went to the fourth floor of 48 West 25th Street and removed cartons of trash which were immediately outside of the door [fol. 834] of A. Schafler.

Q. And have you retained the contents of this trash?

A. I have.

Q. I show you Government's Exhibit 175 for identification and ask you if you can identify this?

A. I can.

Q. Can you tell us what those papers are?

A. Well, these are torn pieces of paper that were in the trash on July 23, 1953, which I attempted to piece together by means of Scotch tape.

Mr. Moran: May I approach the bench for a minute, your Honor?

(Discussion at the bench off the record.)

Q. Agent Miller, I show you Government's Exhibit 176 for identification and ask you if you can identify this?

A. These are portions of pieces of paper that I found in the trash on July 24, 1953, that I attempted to piece together by means of Scotch tape.

Mr. Steinberg: Excuse me, sir.
Mr. Moran, what is your exhibit?
The Court: 175.
Mr. Steinberg: Thank you.

[fol. 835] Q. Agent Miller, I show you Government's Exhibit 177 and ask you if you can identify this?

A. These likewise are pieces, torn pieces of paper, that I found in the trash on July 25, 1953, and that I attempted to piece together by means of Scotch tape.

* * * * * * *

[fol. 879] Lawrence Winsch, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Moran:

Q. Mr Winsch, what is your occupation?

A. I am presently vice-president of the Photo Reprint Corporation, at 40 Wall Street.

Q. How long have you been associated with that firm?

A. Approximately four and a half years.

Q. Was there a time subsequent to that when you were employed by the Federal Bureau of Investigation?

A. Yes, sir; up to August of 1953.

Q. And in what capacity?

A. As a photographer.

Q. During your employment with the Federal Bureau of Investigation, were you assigned to make observations of a place of business on West 25th Street?

A. Yes, sir.

Q. On what day?

A. July 28, 1953.

Q. And would you tell us what you observed on that [fol. 880] particular day, fixing the time if you can?

A. Well, on that morning, on the plant beside myself was Special Agent Bryan Mogen.

Mr. Coleman: Would you speak louder, please?

The Court: On that morning on the plant Special Agent—

The Witness: Bryan Mogen was with me.

Q. What do you mean by "Plant", first of all?

A. Well, the plant was an operational point that we had directly across the street from 48 West 25th Street.

We were on the fourth floor, and we were to observe activities in Room 409 of 48 West 25th Street.

Q. And what did you observe, sir?

A. About 11.15 in the morning there were two people in the office, whom we definitely established the identity. That was Anthony Stracuzza and Dorothy Stracuzza. About 11.15 a third individual came in. He was about 50.

Mr. Coleman: I am sorry. I can't hear you.

The Court: You say he was about 50?

The Witness: He was about 50 years of age.

[fol. 881] A. (Continuing) Tall, and he was balding, and he stayed in the office between 11.15 and 12.15, and during that time he had lengthy conversations with Mr. Stracuzza.

He inspected boxes and cartons that were in the office. At one time Mr. Stracuzza went over to his desk and he gave him a sheaf of papers to go through. He inspected those papers. He seemed to be comparing some of the papers with some of the boxes he was opening and looking into, inspecting, and then would give them back to Mr. Stracuzza; and about 12.15 he left, and he went out to the street and disappeared down 25th Street.

Q. Do you see that person in the courtroom today?

A. Yes, sir; I do.

Q. Can you point him out to us?

A. Last man on the right, right up here.

Mr. Moran: May the record indicate that the witness has identified the defendant Max Schaffer.

Q. Now, during this course of time that you were making this observation, did there come a time that you took motion pictures of this premises?

A. Yes. During this period of 11.15 and 12.15 we took [fol. 882] films.

* * * * * * *

[fol. 891] JACK C. JOLLEY, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Moran:

* * * * * * *

[fol. 896] The Court: Yes. You said that you assisted in making some arrests and identifying certain cartons, and you said you saw some man come in around 4:30. Now, did you do anything else?

The Witness: Yes. I identified myself to the man as a special agent of the Bureau and asked him who he was. He hesitated—

The Court: No, no, from here on—

Mr. Moran: All right.

Q. Now, did you have a conversation with this person? A. Yes, I did.

Q. And what did he say to you and what did you say to him?

Mr. Steinberg: I object to that unless the person is identified.

The Court: Yes.

Q. All right, do you see this person in the courtroom? A. Yes, sir, I do.

Q. Can you point him out to us?

[fol. 897] A. Yes, it is the gentleman down here at the end of the table.

Mr. Moran: May the record indicate that the witness has identified the defendant Max Schaffer.

Q. Now, what did he say to you?

Mr. Steinberg: Just a second.

If your Honor please, I object to that, in so far as the defendant Karp is concerned.

The Court: Well, yes, it relates only to Schaffer until the Government connects it.

Mr. Steinberg: Exactly, your Honor.

Mr. Katz: Same as to the defendant Marco.

Mr. Coleman: Your Honor, at this point, and also on the record, as to Norman Schaffer, I understand it was just with the man you have identified, the conversation that you--

The Witness: Sir?

Mr. Coleman: I understand from the answer the conversation was with a gentleman whom he has identified as Max Schaffer. So at this point this conversation would not be binding on Norman Schaffer.

The Court: That is correct.

Mr. Coleman: Yes.

Q. Would you state now what if any conversation you had with Max Schaffer?

[fol. 898] A. Yes. I asked him who he was, and he identified himself; and I asked him what he was doing there, and he told me that he had a clothing store in Lebanon, Pennsylvania, and that he had just arrived in town that day and had a phone call from someone, identifying himself as "Tony," and that Tony had some nice buys in ladies' clothing for him; and he further stated that that was his first trip in there; he had just come in to see what Tony had for sale, and he had never been there before; and that is roughly just about all he said.

Q. Now, at the conclusion of this interview, did you obtain a signed statement from Max Schaffer?

A. Yes, yes, sir; I did.

(Marked Government's Exhibit 189 for identification.)

Q. Mr. Jolley, I show you Government's Exhibit 189 for identification and ask you if you can identify this?

A. Yes, sir. This is a statement I took that afternoon in my handwriting.

Q. Is this statement in your handwriting?

A. Yes, sir; I wrote it.

Q. And is the signature at the bottom of that in the [fol. 899] handwriting, or was it signed by the defendant Max Schaffer?

A. Yes, he signed it.

• • • • • • •

[fol. 899a]

GOVERNMENT'S EXHIBIT 189

Signed sworn statement of the defendant Max Schaffer.

(OFFSET)

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

New York City
7-28-53

I, May Schaffer, made the following voluntary statement to Jack C. Jolley and Howard La Dube, who have identified themselves as Special Agents of the Federal Bureau of Investigation. I have been advised of my right to a lawyer and that I do not have to make a statement. I have been told that it may be used in court.

My name is May Schaffer and I own and operate a store in Lebanon, Pa. I wish to say that I do not know and have never done business with a man named Tony who operated at 48 W 25th Street, New York City. I would also like to say that I have never done business with the A. Schaffer Co., 48 W 25th Street, Phone Number Oregon 5-4224, I say that except for my one trip to 48 W 25th Street New York City, at about 4 PM on 7-28-53.

May Schaffer

Jack C. Jolley, F.B.I., New York City, 7-28-53
Howard C. LaDube, F.B.I. New York 7-28-53

Q. Was there any conversation between you and Mr. Marco concerning this?

A. The labels in this particular thing that we got in was only sold by one store in the town.

Q. And what store was this?

A. It was A. W. Cox.

Q. That was another department store in Bluefield?

A. Yes.

Q. Did you have a conversation about this with Mr. Marco?

A. Well, it was just that we could sell it so much cheaper.

Q. And what did he say? Did he say anything further?

A. He said it was stolen.

Q. And did he say anything concerning the person or persons from which he obtained this merchandise?

A. Not at that time, no.

Q. Did he at some future time have a conversation with you concerning this source of merchandise?

A. Well, he had the conversation with everybody in [fol. 998] the store.

Q. Well, what did he say?

A. You mean from who?

Q. Yes.

A. Well, there were several people he got—

Q. Do you recall any of their names?

A. Well, there was Freddie Kusnick, Sol Eisenberg, Sol Green—can't remember.

Q. Any other names that you can recall?

A. (No response.)

Q. Was the name Hyman Berk mentioned?

A. Yes.

Q. In the same category?

A. Yes.

Q. As being persons who furnished Marco with stolen merchandise?

A. Yes.

Mr. Katz: If your Honor please, I will object to that. I don't believe the witness testified to that. It is also leading.

The Court: Did he say he received stolen merchandise from these people?

The Witness: Yes, sir.

• • • • • • •

[fol. 1002] The Court: And the question the District Attorney asked you now is what did you do or what did you see other employees do with regard to that merchandise?

The Witness: Cut labels out.

The Court: Cut labels out of the merchandise?

The Witness: Yes.

The Court: Cut labels out of the merchandise.

The Witness: Yes.

By Mr. Moran:

Q. What was done with these labels?

A. Just throw them away.

Q. Did you throw them away, or did you see somebody else throw them away?

A. I don't know who threw them away.

Mr. Steinberg: I can't hear the witness.

The Court: Keep your voice up.

A. (Repeating) I don't remember who threw them away.

[fol. 1003] Q. Do you recall the name or names that appeared on these labels?

A. There was one, "Sears and Roebuck," yes.

• • • • • • •

[fol. 1004] Q. Mr. Marco was quite a clowner, wasn't he?

The Court: He was what?

Mr. Katz: Clowner, clowner.

The Court: I'm sorry.

Q. He was always joking around, wasn't he?

A. Oh, yes, anybody in the city could tell you that.

Q. Anyone in the city could tell you that. And, as a matter of fact, when he told you, Mrs. D'Andrea, about stealing, he was actually joking and teasing, wasn't he?

Mr. Moran: I object to that, your Honor.

The Court: No, I will allow that.

Q. Wasn't that a fact?

A. I thought so, yes.

Q. And I believe you said that he made the same statement there in front of all the girls; isn't that right?

A. That's right.

Q. And, as a matter of fact, he would even make the [fol. 1005] same statement in front of customers, wouldn't he, at times?

A. I suppose so.

The Court: Well, the question is—

Mr. Moran: I move to strike out the answer.

The Court: The question is, did you hear him make the same statement in front of customers?

The Witness: Yes.

* * * * * * *

[fol. 1007] Redirect examination.

By Mr. Moran:

By the Court:

Q. You said that there was a time when you talked to Mr. Marco about some coats that had labels, that were sold in another store.

A. I didn't say anything about coats. I said suits.

Q. Suits. I am sorry. Do you remember the name of the label in the suits?

A. Donneybrook.

Q. Donneybrook?

A. Yes.

Q. And do you know what the other store sold those suits for with that label?

A. You mean the price?

Q. Price, yes.

A. No, I don't remember.

[fol. 1008] Q. Well, do you remember whether your store was selling them at the same price, or more, or less?

A. I think it was less.

Q. And how much less?

A. Oh, 10, 15, 20 dollars, I don't remember. I know it was enough for a customer to get excited about.

* * * * * * *

[fol. 1011] SALLIE MAE ALLEY, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

By Mr. Moran:

* * * * * * *

[fol. 1014] Q. Can you tell us what period of time you were employed in 1953?

A. Wasn't for very long. It could have been June and July.

Q. Was it some time earlier than that?

A. It could have been. I don't just recall the dates. It's been too long.

Q. What kind of work did you do for Mr. Marco during both of these periods of time?

A. I was a saleslady.

Q. Any particular item of merchandise that you sold?

A. Mostly in coats and suits.

Q. Do you recall any of the names of the persons from whom Mr. Marco purchased the merchandise that was received in Marco's store?

A. I didn't check in the merchandise. I don't know the names.

Q. Do you recall—does the name "A. Schafler" mean anything to you?

A. I have heard Mr. Marco speak of him, but I don't know what shipments he got from him.

Q. Can you tell us whether he did receive any shipments from A. Schafler?

[fol. 1015] A. Not definite, no.

Q. Can you tell us what if anything you did with merchandise during the period of time that you were employed in 1953?

A. Well, I stocked the merchandise, helped keep it clean and sold it.

Q. Did you do anything with labels?

A. Oh, yes, we sewed in labels.

Q. Did these garments have labels in them before you sewed the other labels on them?

A. Not to my memory.

Q. How long had you done this type of sales work?

A. I started when I was 17 years old. I was out quite a while when my son was growing up.

Q. And for approximately how long a period was this?

A. When I was out of the—

Q. No, from the time you first started doing sales work?

A. Well, I am 63 years old, and I started in the store when I was 17.

Q. Had you ever sewn in labels before?

A. No, sir.

Q. In the other employments you had?

[fol. 1016] A. No, sir.

Q. Did any other employees sew labels in garments?

A. Yes.

Q. Do you know their names?

A. Well, Mrs. Froye.

Q. F-r-o-y-e, is that spelled?

A. I believe it is.

Q. Any other employee?

A. No, we only kept a couple of saleslaadies outside of Mrs. Froye.

Q. Was there any other person in the store that did it?

A. Mrs. Marco helped us out sometimes.

Q. Do you recall any particular garment in which you sewed labels?

A. The only thing I sewed labels was in coats and suits.

Q. Do you recall the name of any particular label?

A. Not of the coats, no. I think we handled the Donneybrook and Madamoiselle, and suits of that brand.

Q. Did you sew labels in?

A. Yes.

. . . . . .

[fol. 1030] Q. Mrs. Alley, did you speak to me in my office less than an hour ago concerning your testimony?

A. Yes.

Q. Did I ask you a question similar to the one I just asked you, concerning any statement that Mr. Marco had made concerning this investigation?

A. Oh, you mean in intimidating people?

Q. I ask you the question again, as to whether he said anything at that time?

A. He said it, but whether he was kidding, sincere, I don't know.

Q. Well, I will just ask you to tell us the conversation. That is a conclusion for the jury.

Mr. Steinberg: If your Honor please, I object to that statement and I ask that your Honor again, in view of the nature of this testimony, rule it has no bearing on Mr. [fol. 1031] Karp, because it is so prejudicial.

The Court: I don't really think it is necessary. I have given you a blanket exception on it.

Mr. Steinberg: I know, but this is different from the other, if your Honor please. I also object to the District Attorney's statement.

The Court: I think it's enough.

Tell us what he said, Madam, if you remember.

The Witness: Well, he was sitting there one day and he said anybody that would cause him to do time, he'd get him.

Mr. Moran: That is all.

The Court: Does anybody want to cross-examine this lady?

Mr. Steinberg: I have no questions, your Honor.

Mr. Katz: I have some.

Excuse me, your Honor, for one minute.

Cross examination.

By Mr. Katz:

Q. Mrs. Alley, Mr. Marco had a tendency to kid and joke around a lot, didn't he?

A. He certainly did.

Q. And have you made a—you made a statement here [fol. 1032] to the effect that anyone who would cause him trouble, or something, would cause him to do time, that he would get him; did you take him seriously, any such statement?

A. It didn't scare me.

Q. What's that?

A. It didn't scare me.

Q. And you didn't take him seriously, did you?

A. No, I didn't, not too much so. In other words, you didn't know how to take him seriously.

* * * * * * *

[fol. 1122] JOHN B. DAVIDSON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

By Mr. Moran:

Q. By whom are you employed, Mr. Davidson?

A. The Federal Bureau of Investigation.

Q. And how long have you been so employed?

A. 16 years.

Q. Where are you presently assigned?

A. I am resident agent at New Bedford, Massachusetts.

Q. How long have you been assigned there?

A. Since 1951.

Q. In the course of your official duties did you have occasion to investigate a business concern known as the Fall River Bargain Center, in Fall River, Massachusetts?

A. Yes, I did.

[fol. 1123] Q. And did you, in the course of your official duties, have occasion to have a conversation with Hyman Karp, of the Fall River Bargain Center?

Mr. Coleman: If your Honor please, I desire to object to any evidence and conversation between this witness and Hyman Karp with respect to the defendants Max Schaffer and Norman Schaffer.

The Court: Same objection, Mr. Katz?

Mr. Katz: Yes.

The Court: Same ruling as before.

Mr. Coleman: That is with respect to the entire line of questioning.

The Court: Yes.

Mr. Coleman: Thank you.

A. Yes, I did.

Q. What was the first time you had occasion to have a conversation with Hyman Karp?

A. The first conversation would be on July 28, 1953.

Q. And who was present at that conversation?

A. Mr. Hyman Karp, an agent named Vivian, and myself.

Q. And where did this conversation take place?

A. At 189 North Main Street, at one of the stores of the [fol. 1124] Fall River Bargain Center.

Q. Do you see Mr. Karp in the courtroom today?

A. Yes, I do.

Q. Can you point him out to us, please?

A. The gentleman just about to stand.

Mr. Moran: May the record indicate that the witness identified the defendant Hyman Karp.

Q. Will you tell us what was said during that conversation by Mr. Karp and by yourself?

A. We identified ourselves and told him that as a result of information we had received from our New York office, there was some question—first we asked him, I believe, if he had received goods from a firm known as A. Schafler in New York City, and he said he had. And then I told him as a result of information that we had received there was some question about the goods that he received from A. Schafler, and I wanted to talk to him about it.

And I believe he said he would like to talk to his attorney first, and he called up an attorney in Fall River, and after talking with the attorney, he said he would be glad to talk to us.

[fol. 1125] Then I asked him about the beginning of the Fall River Bargain Center, and he said that he started in business on or about November 17, 1950, when he purchased the store at 189 North Main Street, in Fall River, and called it the Fall River Bargain Center. This was a dry-goods store, handling mostly children's and women's, misses—children's and misses' wear—it was approximately the size of this courtroom. It had two doors at the main entrance.

He said he purchased another store in Fall River at 1320 Pleasant Street, in June of 1951. This was formerly a dry-goods store, and he simply changed the name, I believe, and called that also the Fall River Bargain Center.

He said he handled a low end children's and misses' wear at both stores.

He said he kept his books at the store at 1320 Pleasant Street, and that he was the only one that entered—made entries in the book, in the books, other than a James Kane —that is spelled K-a-n-e—who was a certified public accountant in Fall River.

He said that for a while after starting in business [fol. 1126] as the Fall River Bargain Center he dealt with recognized wholesalers, and about September of 1951 he came to New York City on a buying trip and looked up a fellow named Hy Berk, to whom he had been introduced to some previously by a relative. At that time he didn't say who the relative was, but in a later conversation he said the relative was his sister, I believe, an Ethel Ringel, who lives in New York City.

After talking with Hy Berk at that time, in September 1951, he said he had a salesroom in the 400 block on Seventh Avenue, in New York City, which I believe he said also had an entrance on 33rd Street. He talked with Hy Berk about obtaining goods, and thereafter dealt with Berk from September 1951 to about September or October of 1952.

He said he ceased doing business with Berk because Berk told him that he was either going out of business or becoming associated with a fellow named Sol Eisenberg. He said that he started doing business with Sol Eisenberg about July of 1952, and met Sol Eisenberg through Hy Berk. Eisenberg had a place at 110 West 40th Street, I believe, [fol. 1127] and—incidentally, he said—I asked him about coming to New York to see Berk, and he said he had been to see Berk at Seventh Avenue, about, well, several times, and that Berk had been to his place in Fall River once.

With regard to Eisenberg, he started doing business with Eisenberg in July, and continued to do business with Eisenberg until December 1952.

Eisenberg, he said, had a showroom at 110 West 40th Street, and handled ladies' dresses or ladies' garments. He

continued to do business with Eisenberg until December, and then ceased doing business with Eisenberg because he said Eisenberg decided to handle ladies' dresses exclusively.

Q. Did he say anything concerning the number of times—

Mr. Steinberg: I object. He hasn't exhausted his recollection of conversation yet. Will you tell him to do that, if your Honor please?

The Court: It doesn't matter.

Was that all that was?

The Witness: No, your Honor.

A. (Continuing) He said that he had been to Eisenberg's place, either half a dozen times, or six times, I am [fol. 1128] not sure which, but it was either one or the other.

Q. At 110 West 40th Street?

A. At 110 West 40th Street, and when he ceased doing business in—well, he started doing business next with a firm known as A. Finkel, at 1133 Broadway, New York, and he said he went to 1133 Broadway about six times, or about a half a dozen times, but never met any person by the name of A. Finkel at that address, but did meet Hy Berk there.

He started business with Finkel in September or October of 1952 and continued to do business with Finkel until March of 1953. In March of 1953 he purchased 33 zoot suits from A. Finkel, for which he paid $150, and sold the zoot suits in a lot to a store known as Boyle Bros., in New Bedford, for which—and sold them for $264. In other words, he told me at a later date he bought them for five dollars apiece and sold them for eight dollars to Boyle Bros.

He said that shortly after he sold the zoot suits he received a visit, or received a call from a John Connell, of the Skelly Detective Agency in Fall River, and Mr. Connell [fol. 1129] had told him that the zoot suits that he had sold to Boyle Bros. had been stolen from a, I believe, the Clinton Swan Clothes in New York City, and thereafter he called Finkel's in New York, but couldn't get any answer.

This zoot suit incident, he said, happened in March of 1953.

He then began doing business with A. Schafler, at 48 West 25th Street, New York City. He said that he began doing business with Schafler as a result of a telephone call he received from a man named Tony. I asked about Tony and he said that Tony was a man that he had met at Finkel's place on one occasion, and that Hy Berk introduced this Tony to Mr. Karp. He said that he had forgotten his last name, and that the introduction was made by Berk saying to Mr. Karp at one time, when he was at Finkel's place, "Say hello to Tony." So Mr. Karp knew him by "Tony," or at a later time, he told me he also knew him as "Mr. T," but he didn't recall or didn't know his last name.

He said he had been to Finkel's place about six times, from the time he first started to do business in September, [fol. 1130] October of 1952, up to the zoot suit incident in March of 1953.

I asked to look at his checkbook, I believe at that time, and he showed me that he had written three checks payable to A. Schafler, and only one of the three had cleared at that time. This one check that he showed me was dated June 17, 1953, payable to A. Schafler, in the sum of $670 and some cents. This was endorsed "A. Schafler," and then a second endorsement of one, Charles Santangelo.

I believe at that time he said that he had first started doing business, or at least the first shipment that he received from Schafler was May 22, 1953, and he continued to do business up to the time I interviewed him on July 28th, and he received during that period about 106 cartons from Schafler.

I asked him about any discount that he might receive from Schafler, and he said that his agreement with Schafler was that he would receive a 33⅓ per cent discount on all goods that he received from Schafler.

There might have been other things about that conversation, but I don't recall them at this time.

* * * * * * *

[fol. 1153] Q. Was there any conversation concerning a man by the name of Mr. Schaffer?

A. I asked him if when he went to Finkel's place, if he

ever met anyone else there, and he said he met a Mr. Schaffer and his son from Lebanon, Pennsylvania. * * *

* * * * * * *

[fol. 1344] CHARLES MILLER, recalled, having been previously sworn, testified further as follows:

Direct examination.

By Mr. Moran:

* * * * * * *

[fol. 1349] Q. I direct your attention to these papers here and ask you if you can tell us what these papers are?

A. These are portions of invoices which I recovered from Stracuzza's trash on July 23, 1953, and which I at-[fol. 1350] tempted to piece together with Scotch tape.

* * * * * * *

[fol. 1600] (GOVERNMENT'S REQUESTS TO CHARGE ARE AS FOLLOWS:)

* * * * * * *

[fol. 1602] 2. The indictment charges that each of the defendants transported and caused to be transported in interstate commerce merchandise of value in excess of $5000. In order to sustain a conviction, the Government is not required to establish that any of the defendants personally transported the merchandise alleged to have been stolen.

It is sufficient if you find that each defendant aided and abetted the transportation of the merchandise by Stracuzza and thus caused such to be transported in interstate commerce.

A defendant, if the evidence supports the charge, may be held as a principal under a federal law, generally referred to as the Aiding and Abetting section, which reads:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces [fol. 1603] or procures its commission, is punishable as a principal.

"(b) Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

• • • • • • •

[fol. 1608] REQUEST FOR INSTRUCTIONS TO THE JURY

A.

REQUEST ON BEHALF OF DEFENDANT, MAX SCHAFFER

• • • • • • •

[fol. 1611] 9.

No violation of Section 2314 takes place unless the Government establishes beyond a reasonable doubt that the defendant Max Schaffer transported or caused to be transported merchandise of a value of five thousand dollars ($5,000.), knowing the same to have been stolen and converted. If the jury finds that the shipments from on or about May 15, 1953, up to and including July 27, 1953, from the Southern District of New York to Lebanon, Pennsylvania, were entirely separate and distinct and were not in fact transported or caused to be transported by Max Schaffer, pursuant to a single plan or agreement with A. Schafler, such shipments cannot be grouped for the purpose of establishing the value of five thousand dol-
[fol. 1612] lars ($5,000.), as required by the statute and must find the defendant Max Schaffer not guilty.

10.

In order to group the shipments between on or about May 15, 1953, up to and including July 27, 1953, the jury would have to find beyond a reasonable doubt that the shipments were transported pursuant to a single plan or agreement between Max Schaffer and A. Schafler and thus had unity of purpose.

• • • • • • •

[fol. 1615] B.

REQUEST ON BEHALF OF DEFENDANT, NORMAN SCHAFFER

* * * * * * *

[fol. 1617] 8.

No violation of Section 2314 takes place unless the Government establishes beyond a reasonable doubt that the defendant Norman Schaffer transported or caused to be transported merchandise of a value of five thousand dol-[fol. 1618] lars ($5,000.), knowing the same to have been stolen and converted. If the jury finds that the shipments from on or about May 15, 1953, up to and including July 27, 1953, from the Southern District of New York to Lebanon, Pennsylvania, were entirely separate and distinct and were not in fact transported or caused to be transported by Norman Schaffer pursuant to a single plan or agreement with A. Schafler, such shipments cannot be grouped for the purpose of establishing the value of five thousand dollars ($5,000.), as required by the statute and must find the defendant Norman Schaffer not guilty.

9.

In order to group the shipments between on or about May 15, 1953, up to and including July 27, 1953, the jury would have to find beyond a reasonable doubt that the shipments were transported pursuant to a single plan or agreement between Norman Schaffer and A. Schafler and thus had unity of purpose.

* * * * * * *

[fol. 1675] [File Endorsement Omitted]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ANTHONY STRACUZZA, MARIO STRACUZZA, DOROTHY STRACUZZA, MAX SCHAFFER, NORMAN SCHAFFER, HYMAN KARP and BENJAMIN T. MARCO, Defendants.

AFFIDAVIT IN OPPOSITION—Filed January 20, 1958

* * * * * * *

[fol. 1679] MOTION FOR SEVERANCE

12. The indictments both charge a conspiracy on the part of the defendants to transport stolen merchandise in interstate commerce (C 145-232) and to receive such merchandise (C 145-233). Information available to the Government indicates that the defendants Max Schaffer, Norman Schaffer, Hyman Karp and Benjamin T. Marco received this merchandise from the Stracuzzas with knowledge that such merchandise was stolen; that the defendants Max Schaffer, Norman Schaffer, Hyman Karp and Benjamin T. Marco were known to one another. Therefore, if a separate trial is granted at the request of Hyman Karp, it will be necessary for the Government to make a complete duplication of its proof; it must call the same witnesses and introduce the same documents, all of which will cause an unnecessary expense to the United States. The defendant Hyman Karp who is brought to trial after the initial prosecution will be forewarned of all the details of the Government's evidence and will be enabled to tailor his defense based on such information.

Wherefore, your deponent prays that the motion to dismiss the indictments and the motion for a severance

and separate trial made by the defendant Hyman Karp be [fol. 1680] denied.

John T. Moran, Jr.

Sworn to before me this 20th day of January, 1958.

Jack W. Ballen, Notary Public, State of New York, No. 41-0146400, Queens County, Term Expires March 30, 1959.

[fol. 1681]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 160—October Term, 1958.

Argued December 4, 1958

Docket No. 25328

UNITED STATES OF AMERICA, Appellee,

v.

MAX SCHAFFER, NORMAN SCHAFFER, BENJAMIN T. MARCO and HYMAN KARP, Defendants-Appellants,

ANTHONY STRACUZZA, MARIO STRACUZZA and DOROTHY STRACUZZA, Defendants.

OPINION—Decided April 21, 1959

Before Swan, Medina and Waterman, Circuit Judges.

Appeal from the United States District Court for the Southern District of New York, Thomas F. Murphy, *Judge*.

Max Schaffer, Norman Schaffer, Hyman Karp and Benjamin T. Marco appeal from a judgment convicting them of knowingly transporting stolen goods in interstate com-

merce in an amount exceeding $5,000 in violation of 18 U. S. C. Section 2314. No opinion below. Affirmed.

[fol. 1682] John T. Moran, New York, N. Y., Assistant United States Attorney (Arthur H. Christy, United States Attorney and George I. Gordon, Assistant United States Attorney, New York, N. Y., on the brief), for appellee.

Jacob Kossman, Philadelphia, Pa. (Irving W. Coleman, Northampton, Pa., on the brief), for Max Schaffer and Norman Schaffer, defendants-appellants.

Harris B. Steinberg, New York, N. Y., for Hyman Karp and Benjamin T. Marco, defendants-appellants.

Medina, Circuit Judge:

Defendants-appellants Max Schaffer, Norman Schaffer, Benjamin T. Marco, and Hyman Karp were convicted of violating Section 2314 of title 18, United States Code by knowingly transporting stolen merchandise consisting of ladies' and children's wearing apparel of a value in excess of $5,000 in interstate commerce.[1] Appellants were tried together to a jury on two indictments, only the first of which is relevant here. The second indictment, containing a single count charge of conspiracy to violate 18 U. S. C., Section 659, by receiving and concealing goods stolen in interstate commerce, of a value of more than $100, knowing the same to have been stolen was dismissed at the close of the prosecution's case.

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[1] 18 U. S. C. Section 2314 provides:

"Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud • • •

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both • • •"

[fol. 1683] The first indictment is in four counts. Count one charges defendants Max and Norman Schaffer and three other defendants, Anthony (Tony) Stracuzza, Mario Stracuzza and Dorothy Stracuzza, with knowingly transporting stolen merchandise between the Southern District of New York and Lebanon, Pennsylvania; during the period from May 15, 1953 to and including July 27, 1953. Count two charges a similar violation by the Stracuzzas and Marco, the transportation taking place between the Southern District of New York and Bluefield, West Virginia, during the period from June 11, 1953 to and including July 27, 1953. Count three charges a similar offense by the Stracuzzas and Karp, the transportation occurring between the Southern District of New York and Fall River, Massachusetts, during the period from May 21, 1953 to and including July 27, 1953. The fourth count charges the four appellants and the three Stracuzzas with a conspiracy to transport stolen merchandise in interstate commerce during the period from September 1, 1952 to October 20, 1954.

Tony and Mario Stracuzza pleaded guilty prior to trial and the indictment of Dorothy Stracuzza was severed and pending at the time of the trial. At the conclusion of the prosecution's case, which took a little over two weeks to present, each of the appellants rested without calling any witnesses in his behalf. The Court, on motions made by the appellants, dismissed the conspiracy count. The substantive counts went to the jury, the principal issue being whether or not each defendant knew that the goods he received from the Stracuzzas was stolen. Each defendant was found guilty of the substantive charge made against him. The two Schaffers and Karp were each sentenced to two years imprisonment, and each was fined $10,000. Marco received a sentence of four years imprisonment and a fine of $10,000. All appellants were released on bail pending appeal.

[fol. 1684] The Government proved that each appellant, a retail garment store owner, entered into a standing agreement with Tony Stracuzza by which merchandise was shipped to him at substantial discounts, previously agreed upon. This merchandise was stolen by Mario Stra-

cuzza, Tony's brother and assistant, who induced various truck drivers to turn the goods over to him for a share of the profits. Such practices had been going on for several years and this illegal business had been initially operated by Sol Eisenberg and Hymie Berk. At first acting in a subordinate capacity with Eisenberg and Berk, Tony along with his brother Mario later formed a partnership with Berk in September 1952 and did business under the name A. Finkel. This partnership lasted until March 1953. Each of the appellants did business with Berk and Eisenberg and all but Marco did business with A. Finkel.

In May 1953 Tony and Mario set out on their own and began operations under the name A. Schafler. It is the appellants' dealings with this concern that are the basis of the indictment. Goods were sent to each appellant at rates 55-65% of the original manufacturer's price. According to agreement Tony Stracuzza sent each appellant the original manufacturers' invoices with each shipment. Max and Norman Schaffer visited each of Stracuzza's various establishments on several occasions and they saw both the merchandise and the manufacturers' invoices. Karp also visited all establishments but A. Schafler's and Marco dealt personally with Stracuzza at Berk and Eisenberg's and at A. Schafler's. The wealth of other evidence produced on trial need not be detailed at this point but will be alluded to as it becomes relevant.

Appellants make the following points: (1) that it was error to refuse to dismiss the indictment and to direct a verdict of acquittal in favor of each appellant on the ground that the aggregation of the value of various ship-
[fol. 1685] ments was permitted despite the fact that no single shipment to any appellant was of a value of $5,000;[2] (2) that it was error to submit any of the substantive charges to the jury in view of the dismissal of the conspiracy count, due to the prejudicial effect on each appellant of the evidence admitted in support of the conspiracy

[2] Appellants Karp and Marco also claim that it was error with respect to them to submit the substantive charges against them to the jury because of the alleged absence of proof that the merchandise sold to them was stolen.

count and the evidence received against each of the other appellants in support of the substantive charges; and (3) that it was error to refuse to direct a mistrial because of allegedly prejudicial and improper comments made by the prosecutor in his summation to the jury.

We shall discuss these contentions *seriatim*, but find no merit in any of them.

The Propriety of Aggregating Shipments

It is conceded that no shipment to any appellant was worth as much as $5,000. On the other hand, it is agreed that if shipments may be aggregated, the statutory requisite is far exceeded.[3] The judicial authority on this point is rather meager and we think with good reason.[4] For the answer has been spelled out in no uncertain terms in the statute and in the legislative history.

Section 2311 of title 18, U. S. C. furnishes the basic definitions used in the chapter on stolen property which includes sections 2311 through 2317. It is there provided:

> [fol. 1686] "'Value' means the face, par, or market value, whichever is the greatest, and the aggregate value of all goods, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof."

That the statute means precisely what it says is shown by the following excerpts from the relevant Congressional reports:

H. R. Rep. 1462, 73d Cong., 2d sess., p. 2 (1934)—

> "As reported by your committee, the jurisdiction of the Federal Government is limited to cases in which the value of the stolen property is $5,000 or more, except in cases of pledging or accepting in pledge

[3] The evidence indicates that the goods purchased and transported by the Schaffers were worth wholesale $19,531.52; by Karp, $17,175.24; by Marco, $23,080.14.

[4] See *Andrews* v. *United States*, 4 Cir., 1939, 108 F. 2d 511; cf. *United States* v. *Segelman*, W. D. Pa., 1949, 86 F. Supp. 114.

such property for a loan in which case the minimum is set at $500. *There is added a provision which authorizes Federal jurisdiction in the case of a series of transactions* involving property of a total value of $5,000 or more." (Emphasis added.)

The reason for the $5,000 limitation is given in this same report. It continues:

"It is believed that it would place too great a burden on the Department of Justice to ask it to undertake to apprehend and prosecute every person violating the substantive provisions of such a law without regard to the amount of property involved. The minimum valuations fixed in the bill required to give the Federal Government jurisdiction are the figures asked and recommended by the Attorney General."

H. R. Rep. 1599 (Conference Report), 73d Cong., 2d sess., p. 3 (1934) contains the following:

[fol. 1687] "The second amendment of the House added, also, a provision which authorizes Federal jurisdiction in the case of a series of transactions involving property of a total value of $5,000 or more. The Senate agreed to the amendment."

H. R. Rep. 422, 76th Cong., 1st sess., pp. 1-2 (1939)—(in amending the Stolen Property Law) reads:

"It is to be noted, in this connection, that under the terms of section 5 of the Act in the event the defendant is charged with a series of violations, the aggregate value of the property referred to in the indictment may be taken to make up the minimum valuation."

As the "series of transactions" between the Stracuzzas and each appellant related to stolen merchandise of "the aggregate value" of more than $5,000, the case clearly meets the statutory test.

Appellants appear to contend that each of the shipments was separate and distinct from the others as they cite

Andrews v. *United States*, 4 Cir., 1939, 108 F. 2d 511, a case where transactions involving values less than $5,000 were aggregated, as the conspiracy established in that case "gave them unity for the purpose of the statute." By way of dictum (p. 514) it was said that "transactions which are entirely separate and distinct cannot be grouped for the purpose of establishing a value within the statute." We need not now decide what ruling should be made in a case where the transactions are truly "separate and distinct." Much may depend upon the facts of a particular case. Here, however, it is perfectly clear that the shipments with respect to each appellant were not "separate and distinct." Although the overall conspiracy between the Stracuzzas and the four appellants was not established, [fol. 1688] the proofs disclose as to each appellant a sufficient "unity for the purpose of the statute." All goods acquired by each appellant were acquired from the same distributor, Tony Stracuzza; all goods were acquired at the same discount according to a pre-arranged agreement; all shipments included within the indictment as to each appellant were concentrated within a specified time of no more than two and one-half months; each shipment had the same origin and destination; the merchandise shipped was all of the same type, ladies' and children's wear; and each appellant in negotiating with the Stracuzzas contemplated a number of transactions.

Appellants admit that the Congress seems to have intended to permit aggregating shipments to meet the $5,000 requirement. But they urge that such a construction might make acts which were "innocent when done" criminal upon the occurrence of subsequent events, i.e. other acts of a similar nature. Such retrospective criminality is then likened to the doctrine of trespass *ab initio*, a doctrine repeatedly repudiated by the Supreme Court. *McGuire* v. *United States*, 1927, 273 U. S. 95, 98-99; *Zap* v. *United States*, 1946, 328 U. S. 624, 629; *On Lee* v. *United States*, 1952, 343 U. S. 747, 751-52.

There is no merit whatever in this contention. Nor are we able to perceive how the transportation of stolen goods knowing them to have been stolen could be regarded as

"innocent when done," regardless of the amount involved. The only reason for the $5,000 limitation is to avoid overtaxing the Department of Justice. There is no legitimate interest of appellants which the Congress sought to protect by this requirement. Hence it is perfectly rational to consider past acts in determining whether any appellant's conduct is important enough to warrant prosecution by the Department of Justice.

[fol. 1689] Finally, the Supreme Court's rejection of the doctrine of trespass *ab initio* is both irrelevant and cited out of context. In the cases cited *supra* the Court was faced with the problem of whether or not the Government could use evidence lawfully obtained after a lawful entry if, subsequent to the lawful entry, the agents who obtained the evidence committed unlawful acts unconnected with the obtaining of the evidence sought to be introduced. In each instance the Court held that the Constitution did not prevent the Government from using the evidence and that the subsequent unlawful acts did not affect the entry so as to "taint" the evidence. The policy considerations underlying the doctrine of trespass *ab initio*, i.e., to punish tortfeasors and to aid their victims, were found inapplicable to the situations there presented. In the case before us there is no "innocent" act being "tainted" by subsequent occurrences; there is no legitimate interest of appellants worthy of protection; and the Congress has a very definite stake in curbing such socially undesirable conduct. Hence we conclude there is no reason for construing the clear mandate of the Congress in any way other than that which was intended.

Appellants Karp and Marco claim that the $5,000 requirement of the statute was not met as they say there was no proof that any particular merchandise purchased by them was stolen. Indeed, they appear to assert that as Mario Stracuzza was the man who induced the truck drivers to steal the original packages and sell them to him, and as Mario did not testify, the whole case collapsed. We think it clear beyond peradventure of doubt on this record that as testified by Tony Stracuzza, all the merchandise he dealt with as "distributor" was stolen merchandise. The collation of the various proofs of this fact

vis-a-vis appellants Karp and Marco would be a work of supererogation.

[fol. 1690] *Were Appellants Prejudiced by the Joint Trial*

Were it not for the conspiracy count, it would have been clearly erroneous to try the appellants together under Rule 8(b), Fed. R. Crim. P.[5] For there would be no common participation "in the same act or transaction constituting an offense" which is a requisite to joinder. See *Kotteakos* v. *United States*, 1946, 328 U. S. 750; *McElroy* v. *United States*, 1896, 164 U. S. 76; *Brooks* v. *United States*, 5 Cir., 1947, 164 F. 2d 142. However, the allegation of a conspiracy count meets the requirements of Rule 8(b) and hence at the outset the joinder was proper and within the discretion of the trial court. *United States* v. *Ball*, 1896, 163 U. S. 662; *United States* v. *Lebron*, 2 Cir., 1955, 222 F. 2d 531, cert. denied, 350 U. S. 876; *United States* v. *Cohen*, 2 Cir., 1941, 124 F. 2d 164, 165, cert. denied *sub nom. United States* v. *Bernstein*, 315 U. S. 811. Moreover, it is not claimed, nor could it be with any show of reason, that the conspiracy count was alleged by the prosecution in bad faith.

Accordingly, as provided in Rule 14, Fed. R. Crim. P.,[6] we must determine on this appeal whether appellants, or any of them, were prejudiced by the joinder. *Berger* v. [fol. 1691] *United States*, 1935, 295 U. S. 78; *United States* v. *Chieppa*, 2 Cir., 1957, 241 F. 2d 635, cert. denied *sub nom.*

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[5] Rule 8(b) provides:

(b) *Joinder of Defendants.* Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

[6] Rule 14 which provides:

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever relief justice requires.

Ivicola v. *United States*, 353 U. S. 973; *Monroe* v. *United States*, D. C. Cir., 1956, 234 F. 2d 49, cert. denied, 352 U. S. 873. The mere fact that the conspiracy count is dismissed at the close of the evidence by the trial judge, or that a verdict of acquittal on that count is returned by the jury, does not establish as matter of law that it was error to submit the substantive charges to the jury.

Appellants assert they were prejudiced by the joinder on two levels, general and specific. The Schaffers are content to claim that the mere idea of receiving individual treatment in a case that took over two weeks to try, involved hundreds of exhibits, numerous witnesses, and four separate defendants is so far-fetched that prejudice must be deemed to result as a matter of law. See *Kotteakos* v. *United States*, *supra*, 328 U. S. 750.

This contention is belied by the record which reveals several precautionary measures taken to assure defendants of a fair trial and indicates no reason whatever why the jury should have been confused. First, each defendant was represented by a separate attorney except that Max and Norman Schaffer had one common counsel. Secondly, with virtually every offer of proof, testimony or exhibit, an instruction was requested and obtained that proof admitted with respect to one defendant was not to be considered with respect to any other defendant. Over fifty such requests and instructions were given. Third, the witnesses were called in orderly fashion so that each group of witnesses focused on a separate defendant. This practice was uniformly observed throughout the trial with but one minor exception. Finally, the Court's charge—admitted to be fair even by appellants' attorneys—carefully reviewed the evidence pro and con with respect to each defendant. And a clear direct admonition was given to [fol. 1692] keep the three distinct charges separate and not to consider evidence bearing on one defendant against another. Thus it is plain upon the face of the transcript of the testimony that throughout the trial Judge Murphy was scrupulously careful to protect the rights of each of the defendants and to make sure that none of them suffered prejudice from the joinder.

Moreover; there was nothing intrinsically complex about either the nature of the case, or of any testimony or exhibit, nor were the instructions of Judge Murphy to the jury in the slightest degree confusing or ambiguous. We have no problem of evidence admitted against one appellant which incidentally implicates another. There was only one witness common to all defendants, Tony Stracuzza, and he gave his testimony in orderly fashion describing his business and then his relationship and his transactions with each defendant in turn. Each defendant lived in a different part of the East, except the two Schaffers who operated their store together; and there is nothing in the record to indicate that any one of them knew of Stracuzza's dealings with the others.

In the face of cautionary instructions from the trial judge, far greater possibilities of confusion have been tolerated on the premise that the jury can and will do as it is told. See *Delli Paoli* v. *United States*, 1957, 352 U. S. 232; *Opper* v. *United States*, 1954, 348 U. S. 84; *Blumenthal* v. *United States*, 1947, 332 U. S. 539; *Berger* v. *United States*, 1935, 295 U. S. 78; *United States* v. *Bando*, 2 Cir., 1957, 244 F. 2d 833; *United States* v. *Chieppa*, *supra*, 2 Cir., 1957, 241 F. 2d 635, cert. denied, *sub nom. Ivicola* v. *United States*, 353 U. S. 973; *United States* v. *Lebron*, 2 Cir., 1955, 222 F. 2d 531, cert. denied, 350 U. S. 876; *United States* v. *Leviton*, 2 Cir., 1951, 193 F. 2d 848, cert. denied, 343 U. S. 946; *Nash* v. *United States*, 2 Cir., 1932, 54 F. 2d 1006, cert. denied, 285 U. S. 556; *Robinson* v. *United States*, [fol. 1693] D. C. Cir., 1954, 210 F. 2d 29; *Dunaway* v. *United States*, D. C. Cir., 1953, 205 F. 2d 23.

The case here is a far cry from the state of affairs disclosed in *Kotteakos* v. *United States*, *supra*, 328 U. S. 750. There 32 defendants were listed in the indictment and 19 were brought to trial. While one huge conspiracy was charged, there was testimony concerning eight separate conspiracies, and the trial court had not only not cautioned the jury about the possibility of many conspiracies and the need to consider the evidence as to each separately, but it instructed the jury that it might consider the overt acts of one conspiracy as proof of the guilt of other conspirators,

whether in the same conspiracy or not. Here we have but four defendants whose individually was carefully observed and protected by both the trial judge and the prosecutor, and a state of proof that we think demonstrates that the evidence adduced against each separate defendant could readily be considered as applicable to him alone.

Appellants Karp and Marco press the point further. They assert that some evidence was received which was admissible only for purposes of establishing the conspiracy and they suggest a few specific instances of evidence received against one defendant, subject to connection as to the others, which is claimed to have been prejudicial. None of these assertions of prejudice will bear analysis.

First, it is claimed that the testimony of Tony Stracuzza to the effect that each of the appellants had purchased stolen goods from Stracuzza's former employers, Berk and Eisenberg, during a six-month period prior to the date of the conspiracy charged in the indictment related only to establishing the conspiracy. However, it is well established that where criminal intent is an essential element of the crime charged, prior instances of a similar pattern of operation are relevant to establish scienter. See 2 Wigmore, Evidence, Section 325 (3d Ed. 1940); [fol. 1694] *United States* v. *Brand*, 2 Cir., 1935, 79 F. 2d 605, cert. denied, 1936, 296 U. S. 655. The proof as to these prior dealings showed the same use of manufacturers' invoices and the same substantial discounts from the manufacturers' wholesale prices as did the evidence concerning the transactions alleged in the indictment.

On the day of Stracuzza's arrest, the F. B. I. found in Stracuzza's office a number of original manufacturers' invoices and a sealed carton of merchandise addressed to Karp which contained such invoices. These exhibits were admitted into evidence, and appellants Karp and Marco assert only for the purpose of proving the conspiracy. However, it is apparent that such evidence was admissible substantively against all defendants since it tended to corroborate Stracuzza's allegedly "tainted" testimony concerning his practice of regularly including the manufacturers' invoices in his shipments.

Both Marco and Max Schaffer gave signed statements to the F. B. I. which were quite damaging to their cases, Marco's because it admitted contact with Eisenberg, Schaffer's because it was falsely exculpatory. However, in each instance the Court instructed the jury to consider the exhibit only against the defendant against whom it was offered and later repeated this admonition when the conspiracy count fell through.

Similarly, what were claimed to be humorous remarks by Marco to the effect that the goods were stolen, testimony of an employee of Marco concerning the removal of labels from A. Schafler merchandise and the insertion of new ones, an F. B. I. motion picture of Max Schaffer leaving Stracuzza's office on July 28, 1953, the day of Stracuzza's arrest, and testimony of Karp's dealing in stolen zoot suits were all accompanied by appropriate limiting instructions by the Court.

[fol. 1695] But when these items of proof are broken down, as they were in the summations to the jury, it is clear that each item is of such a character as to affect only the person involved. For example Max Schaffer alone was depicted in the motion picture showing him inspecting merchandise and documents, claimed by the prosecution to be manufacturers' invoices, in Stracuzza's show-room; and he is the very man who, shortly after the taking of the motion picture, told the F. B. I. men that he had never been in the place. So it was with reference to Karp's dealings with the stolen zoot suits, and his telephone conversation with Stracuzza about protection. In view of the repeated instructions on the point, no member of the jury could have supposed that these fragments of the prosecution's evidence affected any other defendant than the one involved in the particular matter testified to.

At best appellants' claims of prejudice come down to a complaint about the guilty "atmosphere" built up by associating each with others so obviously guilty, and the fact that a "tainted" witness was buttressed by the independent proof relating to all defendants, instead of that relating to one alone. Of course, the fact that each appellant makes these claims somewhat weakens their force. But in the absence of any bad faith on the part of the government in

bringing the conspiracy count, the repeated interim instructions and the charge of the Court protecting each defendant's individuality have been traditionally considered as sufficient safeguards for those accused of crime. We conclude that none of the defendants suffered prejudice from the joinder.

There was more than ample proof to sustain a finding that each defendant knew the goods he was buying from Stracuzza were stolen, and that is all there is to the case. The attack on Stracuzza's credibility was a formidable [fol. 1696] one, amply justified by this record; but his credibility was a question solely for the jury to determine.

The Propriety of the Prosecutor's Summation

During the course of their summation appellants sought to discredit the testimony of Tony Stracuzza by alluding to the Government's alleged breach of duty by its failure to call either Mario or Dorothy Stracuzza to corroborate his story. After pointing out that Mario's testimony would only be cumulative, that Dorothy's indictment was still pending, and that the defendants could have called them to the stand themselves had they wanted to, the prosecutor made the following comments.

> "Now in making these comments as to the conduct of the prosecution, there was some criticism as to the extent that the Government failed in its obligations to its citizens to bring out all the facts. I say to you as an assistant United States Attorney, my job is not to convict people, but is to bring them here in court, give them a fair chance to meet the charges that the Government has presented against them.
>
> The motto on the building of the Department of Justice in Washington I think fairly indicates the attitude of the Government, as far as citizens are concerned. It reads:
>
> 'The Government wins when justice is done its citizens in the court.'
>
> Now, of course, if you believe that the Government has in some way or other prevented you from getting

the full truth of this entire case, that it in some way here concealed the true facts pertaining to any of these defendants, you have only one duty—you have to march right into that jury-room and acquit every one of these defendants."

[fol. 1697] Far from inserting the prosecutor's personal integrity into the case, these extracts demonstrate a commendable candor and sense of fair play by the Government in permitting the jury to draw inferences from the evidence or lack thereof. Thus calling attention to the duties of a prosecutor did not constitute any representation of the prosecutor's integrity. It was no more than a legitimate and proper answer to an argument advanced in the summation of appellants' counsel. Moreover, the trial judge later properly instructed the jury that no unfavorable inference could be drawn as to Stracuzza's testimony from the Government's failure to call other witnesses in view of the fact that these witnesses were equally available to the de[illegible]e.

Affirmed.

[fol. 1698]

IN UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Present: Hon. Thomas W. Swan, Hon. Harold R. Medina, Hon. Sterry R. Waterman, Circuit Judges.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

MAX SCHAFFER, NORMAN SCHAFFER, HYMAN KARP and BENJAMIN T. MARCO, Defendants-Appellants.

JUDGMENT—April 21, 1959

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and they hereby are affirmed.

A. Daniel Fusaro, Clerk.

[fol. 1699a]

Petition of Hyman Karp and Benjamin T. Marco for Rehearing or Stay of Mandate and Continuance of Bail and Stay of Collection of Fine Covering 9 Pages Filed May 11, 1959 Omitted From This Print. It Was Denied, and Nothing More by Order May 18, 1959.

[fol. 1699b]

Petition for Rehearing on Behalf of Appellants Max Schaffer and Norman Schaffer; and, Alternatively, Motion to Stay Issuance of Mandate and to Continue Bail Covering 22 Pages Filed May 4, 1959 Omitted From This Print. It Was Denied and Nothing More by Order May 18, 1959.

[fol. 1700]

In United States Court of Appeals
Second Circuit

Present: Hon. Thomas W. Swan, Hon. Harold R. Medina, Hon. Sterry R. Waterman, Circuit Judges.

United States of America, Plaintiff-Appellee,

v.

Max Schaffer, Norman Schaffer, Hyman Karp and Benjamin T. Marco, Defendants-Appellants.

Order Denying Rehearing—May 18, 1959

A petition for rehearing having been filed herein by counsel for the appellants Hyman Karp and Benjamin

T. Marco together with a motion to stay the issuance of the mandate and to continue bail and to stay collection of fines pending application for a writ of certiorari to the Supreme Court of the United States,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

Further ordered that the motion to stay the issuance of the mandate and to continue bail and to stay collection of fines pending said application be and it hereby is granted.

A. Daniel Fusaro, Clerk.

[fol. 1702]

In United States Court of Appeals
Second Circuit

Present: Hon. Thomas W. Swan, Hon. Harold R. Medina, Hon. Sterry R. Waterman, Circuit Judges.

United States of America, Plaintiff-Appellee,

v.

Max Schaffer, Norman Schaffer, Benjamin T. Marco, Hyman Karp, Defendants-Appellants,

Anthony Stracuzza, Mario Stracuzza, Dorothy Stracuzza, Defendants.

Order Denying Rehearing—May 18, 1959

A petition for rehearing having been filed herein by counsel for the appellants Max Schaffer and Norman Schaffer together with a motion to stay the issuance of mandate and to continue bail pending application for a writ of certiorari to the Supreme Court of the United States,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is denied.

Further ordered that the motion to stay the issuance of the mandate and to continue bail pending said application be and it hereby is granted.

A. Daniel Fusaro, Clerk.

[fol. 1703] [File endorsement omitted]

[fol. 1704] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1705]

SUPREME COURT OF THE UNITED STATES

No. 111—October Term, 1959

MAX SCHAFFER and NORMAN SCHAFFER, Petitioners,

vs.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and one and one half hours are allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1706]

SUPREME COURT OF THE UNITED STATES

No. 122—October Term, 1959

HYMAN KARP and BENJAMIN T. MARCO, Petitioners,

vs.

UNITED STATES OF AMERICA.

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and one and one half hours are allowed for oral argument. The case is set for argument immediately following No. 111.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.